

The Honorable

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

Seattle School District No. 1,

Plaintiff,

No.

V.

JUUL Labs, Inc. f/k/a PAX Labs, Inc., PAX Labs, Inc., Eonsmoke, LLC, Altria Group, Inc., Altria Client Services, Altria Group Distribution Company, Nu Mark LLC, and Nu Mark Innovations, Ltd.,

Defendants.

**COMPLAINT
JURY TRIAL DEMANDED**

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JURY TRIAL DEMANDED
()**

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COMPLAINT
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I. INTRODUCTION

1. One of the great public health success stories over the past decade has been a reduction in youth tobacco use and in nicotine addiction. Youth smoking rates plummeted from 28% in 2000 to 7.6% in 2017.¹ This success has been the result of years of litigation and strict regulation. It is also due to a public health message that Big Tobacco can no longer dispute or contradict, and which is simple, stark, and effective: smoking kills.

2. This incredible progress towards eliminating youth use of tobacco products has now largely been reversed due to e-cigarettes and vaping. Between 2017 and 2018, e-cigarette use increased 78% among high school students nationwide, from 11.7% of high school students in 2017 to 20.8% of high schoolers in 2018.² Among middle school students, e-cigarette use increased 48% between 2017 and 2018.³ The increase in youth nicotine vaping from 2017 to 2018 was the largest for any substance tracked by the national Monitoring the Future surveys over the past 44 years.⁴ Youth vaping rates continued to climb from 2018 to 2019, such that vaping prevalence more than doubled among each grade level surveyed—8th, 10th, and 12th graders—in the past two years.⁵ In 2018, 3.6 million middle and high school students reported

¹ Meredith Berkman, *Testimony of Meredith Berkman, Parents Against Vaping E-cigarettes*, U.S. House Committee on Oversight & Reform (July 24, 2019),
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Berkman-PAVe%20Testimony.pdf>.

² Jerome Adams, *Surgeon General's Advisory on E-cigarette Use Among Youth*, Ctrs. for Disease Control & Prevention (Dec. 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

³ 2018 NYTS Data: A startling rise in youth e-cigarette use, U.S. Food & Drug Admin. (Feb. 2, 2019), <https://www.fda.gov/tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-youth-e-cigarette-use>.

⁴ Trends in Adolescent Vaping, New Eng. J. Med. (Oct. 10, 2019), <https://www.nejm.org/doi/full/10.1056/NEJMc1910739>.

5 *Id.*

1 using e-cigarettes, an increase of 1.5 million youth.⁶ This record increase was repeated between
 2 2018 and 2019, bringing the number of youth e-cigarette users to over 5 million.⁷

3 3. Plaintiff Seattle School District No. 1 (“Plaintiff” or “Seattle Public Schools” or
 4 “SPS”) has experienced a rapid increase in vaping by its students consistent with these national
 5 numbers. Seattle Public Schools is the largest K-12 school system in Washington State, with
 6 approximately 53,000 students in 102 schools. In 2018, more than one in every four SPS high
 7 school seniors reported vaping in the past 30 days.⁸ Between 2016 and 2018, e-cigarette use
 8 increased 229% among SPS 10th graders.⁹ SPS administrators report that in the last two years,
 9 vaping in school bathrooms has become a real issue, with kids congregating in the bathrooms,
 10 vapor clouds setting off fire alarms, and assistant principals and security having to devote
 11 significant time to increased hall sweeps. Throughout the district, 90% percent of tobacco and
 12 nicotine violations during the 2017-2018 school year were for vaping, and over 60% of those
 13 violations were for JUUL use specifically.¹⁰

14 4. According to the Centers for Disease Control and Prevention (“CDC”) Director
 15 Robert Redfield, “The skyrocketing growth of young people’s e-cigarette use over the past year
 16 threatens to erase progress made in reducing tobacco use. It’s putting a new generation at risk for
 17
 18
 19
 20
 21

22 ⁶ *Supra* note 3.

23 ⁷ *Youth Tobacco Use: Results from the National Youth Tobacco Survey*, U.S. Food & Drug Admin. (2019),
<https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey#1>.

24 ⁸ Healthy Youth Survey 2018 Report of Participating Schools: Seattle Public Schools Grades 6, 8, 10, and 12
 25 (“Healthy Youth Survey 2018”) at 11, Healthy Youth Survey (Mar. 1, 2019),
https://www.seattleschools.org/UserFiles/Servers/Server_543/File/District/Departments/CoordSchoolHealth/HealthyYouthSurvey/HYS%20All%20grades%20Final.pdf.

26 ⁹ *Id.*

¹⁰ Amy Radil, *Seattle experts say restrictions on vaping must go further*, KUOW (Nov.21, 2018),
<https://kuow.org/stories/as-students-embrace-juuling-seattle-experts-say-restrictions-must-go-farther>.

1 nicotine addiction.”¹¹ Former U.S. Food and Drug Administration (“FDA”) Commissioner Scott
 2 Gottlieb described the above statistics as “astonishing,” and both the FDA and the U.S. Surgeon
 3 General have characterized youth vaping as an “epidemic.”¹² The Secretary of the U.S.
 4 Department of Health and Human Services declared that “[w]e have never seen use of any
 5 substance by America’s young people rise as rapidly as e-cigarette use [is rising].”¹³

6 5. A major cause of this epidemic is Defendant JUUL Labs, Inc., the maker of the
 7 JUUL e-cigarette. JUUL entered the e-cigarette market in 2015 and now controls over 70% of
 8 it.¹⁴ Over a million JUUL e-cigarettes were sold between 2015 and 2017.¹⁵ In 2017, JUUL
 9 generated over \$224 million in retail sales, a 621% year-over-year increase.¹⁶ By June 2018,
 10 sales had skyrocketed another 783%, reaching \$942.6 million.¹⁷ The e-cigarette category as a
 11 whole grew 97% to \$1.96 billion in the same period, largely based on JUUL’s market success.¹⁸
 12 A majority of high school and middle school students using e-cigarettes in 2019 reported JUUL
 13
 14

15
 16 ¹¹ *Texas governor signs law increasing the age to buy tobacco products to 21*, CNN (June 8, 2019),
 https://m.cnn.com/en/article/h_b4cf0b92fd821251a4ae48df9b717145.

17 ¹² Angelica LaVito, *FDA chief Gottlieb threatens to pull e-cigarettes off market if ‘astonishing’ surge in teen use*
 doesn’t slow, CNBC (Nov. 16, 2018), https://www.cnbc.com/2018/11/16/fda-chief-gottlieb-threatens-to-pull-e-
 cigarettes-off-market.html; Jayne O’Donnell, *FDA declares youth vaping an epidemic, announces investigation,*
new enforcement, USA Today (Sept. 12, 2018), https://www.usatoday.com/story/news/politics/2018/09/12/fda-
 scott-gottlieb-youth-vaping-e-cigarettes-epidemic-enforcement/1266923002/.

18 ¹³ Jan Hoffman, *Study Shows Big Rise in Teen Vaping This Year*, N.Y. Times (Dec. 17, 2018),
 https://www.nytimes.com/2018/12/17/health/ecigarettes-teens-nicotine-.html; Rajiv Bahl, *Teen Use of Flavored*
Tobacco was Down, But E-Cigarettes Are Bringing It Back Up, Healthline (Jan. 9, 2019),
 https://www.healthline.com/health-news/flavored-tobacco-use-rising-again-among-teens#An-unhealthy-habit.

19 ¹⁴ Richard Craver, *Juul ends 2018 with 76 percent market share*, Winston-Salem J. (Jan. 8, 2019),
 https://www.journalnow.com/business/juul-ends-with-percent-market-share/article_6f50f427-19ec-50be-8b0c-
 d3df18d08759.html.

20 ¹⁵ Melia Robinson, *How a startup behind the ‘iPhone of vaporizers’ reinvented the e-cigarette and generated \$224*
 million in sales in a year, Bus. Insider (Nov. 21, 2017), https://www.businessinsider.com/juul-e-cigarette-one-
 million-units-sold-2017-11/.

21 ¹⁶ *Id.*

22 ¹⁷ Angelica LaVito, *Popular e-cigarette Juul’s sales have surged almost 800 percent over the past year*, CNBC
 Health & Sci. (Sept. 11, 2018), https://www.cnbc.com/2018/07/02/juul-e-cigarette-sales-have-surged-over-the-
 past-year.html.

23 ¹⁸ *Id.*

1 as their usual brand.¹⁹ JUUL's dominance of the e-cigarette market has been so rapid, and so
 2 complete, that the act of vaping is now often referred to as "juuling."

3 6. Other companies have noticed this success and capitalized on it. Defendant
 4 Eonsmoke, LLC ("Eonsmoke") explicitly traded on JUUL's market share, promoting its own
 5 products as "JUUL compatible" and using JUUL's hashtags to market and sell its products to
 6 JUUL users. Eonsmoke understood that many JUUL users were youth and marketed its products
 7 to these children, initiating a successful "Doit4juul" social media campaign and offering its
 8 JUUL-compatible pods with flavors including "Sour Gummy," "Pineapple Crush," and "Pink
 9 Lemonade."²⁰

10 7. JUUL's market dominance also attracted the attention of government regulators,
 11 including the FDA. On February 24, 2018, the FDA sent a letter to JUUL expressing concern
 12 about the popularity of its products among youth and demanding that JUUL produce documents
 13 regarding its marketing practices.²¹ On September 12, 2018, the FDA sent letters to JUUL and
 14 other e-cigarette manufacturers putting them on notice that their products were being used by
 15 youth at disturbing rates.²² In October 2018, the FDA raided JUUL's headquarters and seized
 16 more than a thousand documents relating to JUUL's sales and marketing practices.²³ As of
 17 October 2019, the FDA, the Federal Trade Commission, multiple state attorneys general, and the
 18

21 19 Karen A. Cullen et al., *e-Cigarette Use Among Youth in the United States, 2019*, JAMA (Nov. 5, 2019),
 22 <https://jamanetwork.com/journals/jama/fullarticle/2755265>.

23 20 *Eonsmoke, LLC Warning Letter*, U.S. Food & Drug Admin. (Oct. 24, 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/eonsmoke-llc-592097-10242019>.

24 21 Matthew Holman, *Letter from Director of Office of Science, Center for Tobacco Products, to Zaid Rouag, at JUUL Labs, Inc.*, U.S. Food & Drug Admin. (Apr. 14, 2018), <https://www.fda.gov/media/112339/download>.

25 22 *Letter From US FDA to Kevin Burns*, U.S. Food & Drug Admin. (Sept. 12, 2018), <https://www.fda.gov/media/119669/download>.

26 23 Laurie McGinley, *FDA seizes Juul e-cigarette documents in surprise inspection of headquarters*, Wash. Post (Oct. 2, 2018), <https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documents-surprise-inspection-headquarters/>.

1 U.S. House of Representatives Committee on Oversight and Reform have all commenced
 2 investigations into JUUL's role in the youth vaping epidemic and whether JUUL's marketing
 3 practices purposefully targeted youth.

4 8. As the pressure on JUUL intensified in late 2018, Defendant Altria Group, Inc.—
 5 maker of Marlboro cigarettes, parent company of Philip Morris USA, and one of the largest
 6 tobacco companies in the world—stepped in to assist. On December 20, 2018, Altria announced
 7 a \$12.8 billion equity investment in JUUL, which gave it a 35% stake in the company. Just
 8 several weeks prior to this announcement, Altria had criticized JUUL's marketing practices in a
 9 letter to the FDA and declared that “pod-based products significantly contribute to the rise in
 10 youth use of e-vapor products.” Altria removed its own pod-based products, the MarkTen Elite
 11 and Apex by MarkTen, from the market—only to commit its substantial resources, regulatory
 12 knowledge, and lobbying muscle to protecting and expanding JUUL’s market share, which, as
 13 Altria and JUUL both know, relies heavily on youth.
 14

16 9. JUUL and Altria are now describing their collaboration as a “harm reduction
 17 opportunity,” and JUUL insists it never marketed to youth. These assertions fall flat against the
 18 facts, as detailed below. Altria has described JUUL’s device as “compelling” and “a terrific
 19 product.” In fact, JUUL has compelled a generation of youth, who were never cigarette smokers,
 20 into nicotine addiction and put them at risk for severe lung injury or other health harms resulting
 21 from aerosol inhalation. JUUL and Altria are working to maintain JUUL’s record-breaking sales
 22 and market dominance—which is not possible if the customer base is only adult smokers seeking
 23 to quit.

25 10. Seattle Public Schools brings this action against Defendants JUUL Labs, Inc. f/k/a
 26 PAX Labs, Inc. (“JUUL”), PAX Labs, Inc., Eonsmoke, LLC, and Altria Group, Inc. and its

1 subsidiaries Altria Client Services, Altria Group Distribution Company, and Nu Mark, LLC, and
 2 Nu Mark Innovations, Ltd (collectively “Altria Defendants”), for damages and injunctive relief,
 3 including abatement of the public health crisis caused by Defendants’ wrongful conduct.
 4

5 **II. JURISDICTION AND VENUE**

6 11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
 7 1331 because Plaintiff’s racketeering claim arises under the laws of the United States, 18 U.S.C.
 8 § 1961, *et seq.*, and pursuant to 28 U.S.C. § 1332(a) because: (i) the amount in controversy
 9 exceeds \$75,000, exclusive of interests and costs, and (ii) the plaintiff and defendants are citizens
 10 of different states. This Court has supplemental jurisdiction over the state law claims pursuant to
 11 28 U.S.C. § 1337.
 12

13 12. The Court has personal jurisdiction over Defendants because they do business in
 14 the Western District of Washington and have sufficient minimum contacts with this District.
 15 Defendants intentionally avail themselves of the markets in this State through the promotion,
 16 marketing, and sale of the products at issue in this lawsuit, and by retaining the profits and
 17 proceeds from these activities, to render the exercise of jurisdiction by this Court permissible
 18 under Washington law and the U.S. Constitution.
 19

20 13. Venue is proper in the Western District of Washington pursuant to 28 U.S.C. §
 21 1391 (b)(2) and (3) because a substantial part of the events or omissions giving rise to the claims
 22 at issue in this Complaint arose in this District and Defendants are subject to the Court’s personal
 23 jurisdiction with respect to this action.
 24

III. PARTIES

25 14. Plaintiff Seattle School District No. 1 (“Plaintiff” or “Seattle Public Schools” or
 26 “SPS”) is a school district located in King County, Washington. Seattle Public Schools is the

1 largest kindergarten through twelfth grade school system in Washington. Seattle Public Schools
2 serves approximately 53,000 students at 102 schools.

3 15. Defendant JUUL Labs, Inc., f/k/a PAX Labs, Inc. (“JUUL”), incorporated in
4 Delaware on March 12, 2007 (file no. 4315504), and has its principal place of business in San
5 Francisco, California. JUUL manufactures, designs, sells, markets, promotes and distributes
6 JUUL e-cigarettes, JUULpods and accessories.
7

8 16. Defendant PAX Labs, Inc., incorporated in Delaware on April 21, 2017 (file no.
9 6387684), has its principal place of business in San Francisco, California. PAX Labs, Inc.’s
10 current website says it was founded in 2007. For much of the relevant time period and until at
11 least 2017, PAX Labs, Inc. and JUUL operated as the same company. During that time, JUUL
12 manufactured, designed, sold, marketed, promoted, and distributed JUUL e-cigarettes,
13 JUULpods, and accessories as a part of PAX Labs, Inc.
14

15 17. Defendant Eonsmoke, LLC, is a New Jersey limited liability company with its
16 principal place of business in Clifton, New Jersey. Eonsmoke markets and sells “Juul
17 Compatible” Eonsmoke and Eonsmoke v2.0 electronic vapor devices and flavor pods, as well as
18 4X pods.
19

20 18. Defendant Altria Group, Inc. is a Virginia corporation, having its principal place
21 of business in Richmond, Virginia. Altria is one of the world’s largest producers and marketers
22 of tobacco products. On December 20, 2018, Altria purchased a 35% stake in JUUL.
23

24 19. Defendant Altria Client Services Inc. is a New York corporation and wholly
25 owned subsidiary of Altria Group, Inc. with its principal place of business in Henrico County,
26 Virginia. Altria Client Services Inc. provides Altria Group, Inc. and its companies with services
in many areas including digital marketing, packaging design & innovation, product development,

1 and safety, health, and environmental affairs. On September 25, 2019, the former senior vice
2 president and chief growth officer of Altria Client Services Inc., K.C. Crosthwaite, became the
3 new chief executive of JUUL.

4 20. Defendant Altria Group Distribution Company is a Virginia corporation and
5 wholly owned subsidiary of Altria Group, Inc. with its principal place of business in Henrico
6 County, Virginia. Altria Group Distribution Company provides sales, distribution and consumer
7 engagement services to Altria's tobacco companies.

8 21. Defendant Nu Mark LLC is a Virginia corporation and wholly owned subsidiary
9 of Altria Group, Inc., with its principal place of business in Richmond, Virginia. Nu Mark LLC
10 was engaged in the manufacture and sale of Altria's electronic vapor products. Shortly before
11 Altria purchased a 35% stake in JUUL in December 2018, Altria Group, Inc. announced that Nu
12 Mark would be discontinuing the production and sale of all e-vapor products.

13 22. Defendant Nu Mark Innovations, Ltd. is a subsidiary of Nu Mark LLC located in
14 Beit Shemesh, Israel. Nu Mark Innovations, Ltd. provides digital marketing and customer care
15 services for Nu Mark LLC and Altria's e-vapor brands, as well as product and technology
16 development services.

17 **IV. ALLEGATIONS OF FACT**

18 **A. Redesigning "the Most Successful Consumer Product of All Time"**

19 23. JUUL was founded by Adam Bowen and James Monsees. The company's
20 beginnings can be traced to the pair's collaboration on a product design master's thesis when
21 they were graduate students at Stanford University in 2004—Monsees completing a Master of
22

1 Fine Arts in Product Design, and Bowen a Master of Science in Mechanical Engineering in
 2 Product Design.²⁴ Their proposed product? A better cigarette.



12 Adam Bowen and James Monsees Source: Juul

13 24. Monsees has described the cigarette as “the most successful consumer product of
 14 all time . . . an amazing product.”²⁵ But years of anti-smoking campaigns have successfully de-
 15 normalized cigarette smoking. As part of their thesis research, Monsees and Bowen interviewed
 16 smokers who talked about feeling self-conscious of the signs of smoking, for example, coming
 17 back into a room after a smoke break and smelling like smoke, or having their hands smell like
 18 cigarettes no matter even after washing them multiple times.²⁶ When Monsees and Bowen
 19 presented their thesis and product design to their classmates, they closed with a clip from a South
 20 Park episode showing the characters assembled at the Museum of Tolerance and shaming a
 21
 22

23
 24

 25²⁴ Allison Keeley, *Vice Made Nice?*, Stanford Mag. (Aug. 2012), <https://stanfordmag.org/contents/vice-made-nice>.

26²⁵ Gabriel Montoya, *Pax Labs: Origins with James Monsees*, Social Underground (Jan. 2015),
<https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

27²⁶ Jordan Crook, *This is the Stanford thesis presentation that launched Juul*, Tech Crunch (Feb. 27, 2019),
<https://techcrunch.com/2019/02/27/this-is-the-stanford-thesis-presentation-that-launched-juul/>.

1 smoker.²⁷ Their goal was to design a cigarette without the stigma and self-consciousness smokers
 2 experienced—as Monsees described it, to “deliver[] solutions that refresh the magic and luxury
 3 of the tobacco category” and recreate the lost “ritual and elegance that smoking once
 4 exemplified.”²⁸

5 25. Essentially, Monsees and Bowen saw a market opportunity in a generation of
 6 consumers brought up on anti-smoking norms. In Monsees’ words, they wanted to redesign the
 7 cigarette “to meet the needs of people who want to enjoy tobacco but don’t self-identify with—
 8 or don’t necessarily want to be associated with—cigarettes.”²⁹ Monsees saw “a huge opportunity
 9 for products that speak directly to those consumers who aren’t perfectly aligned with traditional
 10 tobacco products.”³⁰

12 26. At one point during their thesis presentation, Monsees states, “The cigarette is
 13 actually a carefully engineered product for nicotine delivery and addiction.”³¹ This description
 14 applies just as well to the product he and Bowen would launch a decade later—JUUL.

16 27. The outcome of Monsees and Bowen’s thesis project was a “heat-not-burn” e-
 17 cigarette, which uses loose-leaf tobacco. The device heated tobacco contained in pods to a
 18 constant temperature, vaporizing nicotine and flavor without burning the materials or producing
 19 smoke.

20 28. After graduation, Bowen and Monsees worked on bringing their thesis project to
 21 the market, incorporating under the name Ploom in 2007. In those early years, they spent a lot of

23 27 *Id.*

24 28 *Onboardly Interview with Ploom Cofounder and CEO James Monsees*, Pax.com,
 25 <https://web.archive.org/web/20161108110231/http://onboardly.com/entrepreneur-interviews/an-interview-with-james-monsees/> (last visited Nov. 7, 2019).

26 29 *Id.*

30 30 *Id.*

31 31 See Crook, *supra* note 26.

1 time talking about what Bowen called “the kind of typical thoughts of evil Big Tobacco
 2 companies like coming down and squashing you.”³² But ultimately, that “was not really an
 3 issue.”³³ In fact, not only did Big Tobacco not squash them, but the opposite. Although Bowen
 4 and Monsees characterized their products as aimed toward consumers not aligned with
 5 traditional tobacco products, they themselves have aligned with Big Tobacco on at least two
 6 occasions: first, with Japan Tobacco and then with Altria.
 7

8 29. In 2010, Ploom launched its e-cigarette as the ModelOne, using pods of loose-leaf
 9 tobacco heated by butane. It did not catch on. Ploom only sold a few thousand of them. By then a
 10 company with a dozen employees, Ploom was faltering, in need of money, technological
 11 expertise, and marketing savvy.³⁴

12 30. Help came from Japan Tobacco International (“JTI”), a division of Japan Tobacco
 13 Inc., the fourth-largest tobacco company in the world. In December 2011, JTI and Ploom entered
 14 into a strategic agreement, which gave JTI a minority stake in Ploom and made it a strategic
 15 partner. In a statement regarding the agreement, Monsees said, “We are very pleased to partner
 16 with JTI as their deep expertise, global distribution networks and capital resources will enable us
 17 to enter our next phase of growth and capitalize on global expansion opportunities.”³⁵ As Bowen
 18 explained in an interview, “We were still doing a lot of our own internal product development,
 19 but now we had access to floors of scientists at JTI.”
 20

22
 23 ³² Keeley, *supra* note 24.
 24 ³³ *Id.*
 25 ³⁴ David H. Freedman, *How Do You Sell a Product When You Can't Really Say What It Does?*, Inc.com (May
 26 2014), <https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html>.

³⁵ *Innovative Partnership for Ploom and Japan Tobacco International JTI to Take Minority Share in Ploom*, Japan
 Tobacco Int'l (Dec. 8, 2011), <https://www.jti.com/sites/default/files/press-releases/documents/2011/innovative-partnership-for-ploom-and-japan-tobacco-international.pdf>.

1 31. In 2012, Ploom unveiled the PAX, a loose-leaf vaporizer that didn't use pods, but
 2 which was much more successful. The following year, Ploom combined elements of the PAX
 3 with the pod system as the ModelTwo. Although consumers were enthusiastic about both the
 4 PAX and the ModelTwo, the products were limited to a small, high-end market. The PAX, for
 5 example, retailed for \$250 when it was first marketed. But, as one of Ploom's investors remarked
 6 in 2014, "The company is going to invade the bigger, lower-end market now dominated by e-
 7 cigarettes."³⁶ He explained that Ploom had "lots of products in the works" and that "we know we
 8 need something cheaper than PAX to go after the mass market. There are still huge opportunities
 9 out there."³⁷

11 32. In February 2015, Ploom and JTI ended their relationship, with buying back JTI's
 12 minority stake in the business. JTI acquired the ModelTwo and pods product line, as well as the
 13 Ploom name, while Ploom kept its open-system PAX vaporizer and changed its name to PAX
 14 Labs Inc. Monsees characterized the partnership as having "afforded both parties many mutual
 15 benefits," but said that the new arrangement would "fuel continued growth" and that PAX
 16 intended "rapid rollouts of new products."³⁸

18 33. PAX made good on its promise of new products and invading the bigger, lower-
 19 end market. As discussed further below, PAX launched the JUUL in June 2015 with a well-
 20 publicized launch party in New York City and a viral social media marketing campaign.
 21

22 34. The company renamed itself JUUL Labs, Inc. in 2017.

25 ³⁶ Freedman, *supra* note 34.

26 ³⁷ *Id.*

³⁸ *JTI to Acquire Ploom Product Line*, Convenient Store News (Feb. 16, 2015), <https://csnews.com/jti-acquire-ploom-product-line#close-olyticsmodal>.

35. By the close of 2017, according to Nielsen data, JUUL had surpassed its competitors in capturing 32.9 percent of the e-cigarette market, with British American Tobacco at 27.4 percent and Altria at 15.2 percent.³⁹ The total e-cigarette market expanded 40 percent to \$1.16 billion.⁴⁰

36. In 2018, JUUL's gross profit margins were 70%⁴¹ and it represented 76.1% of the national e-cigarette market.⁴² In a complaint it filed in November 2018 against 24 vape companies for alleged patent infringement, JUUL asserted that it was "now responsible for over 95% of the growth in the ENDS pod refill market in the United States" and included the following chart:⁴³

Appendix 5: U.S. ENDS Pod Market Retail Unit Sales Growth 2018

4-Week Unit Sales by End Date

	Nielsen			IRI		
	Apr 21	Sep 8	Share of Growth	Apr 22	Sep 9	Share of Growth
Total Market	36,002,645	55,773,039	100%	29,546,883	50,793,955	100%
Juul	22,618,886	41,501,172	95.5%	14,964,158	35,166,120	95.1%
Vuse	6,385,922	6,172,595	-1.1%	7,204,900	7,409,312	1.0%
MarkTen	3,677,300	4,240,285	2.8%	2,904,168	3,230,237	1.5%
Logic	1,785,167	2,018,023	1.2%	1,928,841	1,876,006	-0.2%
Blu	1,062,360	1,461,127	2.0%	1,305,209	1,937,225	3.0%
Other	473,010	379,837	-0.5%	1,239,607	1,175,055	-0.3%

³⁹ Ari Levy, *E-cigarette maker Juul is raising \$150 million after spinning out of vaping company*, CNBC (Dec. 19, 2017), <https://www.cnbc.com/2017/12/19/juul-labs-raising-150-million-in-debt-after-spinning-out-of-pax.html>.

40 *Id*

⁴¹ Dan Primack, *Scoop: The Numbers Behind Juul's Investor Appeal*, Axios (July 2, 2018), <https://wwwaxios.com/numbers-juul-investor-appeal-vaping-22c0a2f9-beb1-4a48-acee-5da64e3e2f82.html>.

⁴² Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market* 2, Stanford Res. into the Impact of Tobacco Advert. (2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

⁴³ Verified Complaint Under Section 337 of the Tariff Act of 1930 at 6, *In the Matter of Certain Cartridges for Elec. Nicotine Delivery Sys. & Components Thereof*, Investigation No. 337-TA-1141 (USITC Nov. 19, 2018), http://tobacco.stanford.edu/tobacco_main/publications/JCUL_Marketing_Stamford.pdf.

37. JUUL shattered previous records for reaching decacorn status, reaching valuation of over \$10 billion in a matter of months—four times faster than Facebook.⁴⁴ This all came just three years after its product launch.

B. Following Big Tobacco's Footsteps

38. JUUL’s staggering commercial success didn’t come from a blank slate. Under the Master Settlement Agreement between Big Tobacco and the States, the public has access to hundreds of thousands of Big Tobacco’s internal documents. In creating JUUL, Monsees and Bowen carefully studied the marketing strategies, advertisements, and product design of Big Tobacco. As Monsees candidly acknowledged, the internal tobacco documents “became a very intriguing space for us to investigate because we had so much information that you wouldn’t normally be able to get in most industries. And we were able to catch-up, right, to a huge, huge industry in no time. And then we started building prototypes.”⁴⁵

39. Monsees, Bowen, and their employees reviewed documents in the Big Tobacco archive that included information on how to manipulate nicotine pH to maximize nicotine delivery in a vapor while minimizing the “throat hit” that may potentially deter new smokers. Chenyue Xing, a chemist who worked for JUUL (then called PAX Labs) and helped patent its liquid-nicotine formula, told Reuters that she recalled reviewing tobacco company records and research. “We had consultants who were veterans of the big tobacco companies,” she said. “We learned all the history.”⁴⁶

⁴⁴ Zack Guzman, *Juul Surpasses Facebook As Fastest Startup to Reach Decacorn Status*, Yahoo! Fin. (Oct. 9, 2018), <https://finance.yahoo.com/news/juul-surpasses-facebook-fastest-startup-reach-decacorn-status-153728892.html>.

⁴⁵ Montoya, *supra* note 25.

⁴⁶ Chris Kirkham, *Juul disregarded early evidence it was hooking teens*, Reuters (Nov. 5, 2019), <https://www.reuters.com/investigates/special-report/juul-e-cigarette/>.

1 40. R.J. Reynolds had researched the addition of organic acids to reduce a cigarette's
 2 harshness while adding more nicotine, and JUUL followed this approach. JUUL added benzoic
 3 acid to its nicotine liquid formula, which both reduced the nicotine's harshness and delivered it
 4 more directly to the user's lungs and brain.⁴⁷ The freebase nicotine in earlier e-cigarettes was
 5 partly absorbed in the user's mouth and throat, resulting in a much slower absorption by the
 6 body.

8 41. JUUL's new nicotine salts formulation was potent. Early testing sometimes
 9 caused testers to shake or vomit.⁴⁸ JUUL contemplated features that would automatically disable
 10 the device after nicotine delivery exceeded a certain threshold; according to Xing, one idea was
 11 to disable the device for 30 minutes following a certain number of puffs.⁴⁹ But in the end JUUL
 12 launched its product without any such features.

14 42. Instead, JUUL's sales force emphasized the addictiveness of its formulation to
 15 persuade retailers to give the new product shelf space. Vincent Latronica, head of East Coast
 16 sales and distribution for JUUL (then called PAX Labs) from 2014 until early 2016, told Reuters
 17 that he used a chart showing JUUL's rapid delivery of nicotine to the bloodstream as a way to
 18 convince store owners that they would have repeat business and not be left with unsold
 19 inventory, and this became a central selling point for the new product.⁵⁰ JUUL's sales team was,
 20 in Latronica's words, "relentless."⁵¹

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⁴⁷ *Id.*

25⁴⁸ *Id.*

26⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

1 43. Other records from the Big Tobacco archive relate to tobacco industry market
 2 strategies and advertisements designed to lure non-smoking youth. Monsees and Bowen were
 3 able to take advantage of an extensive online tobacco advertising research database maintained
 4 by the Stanford Research into the Impact of Tobacco Advertising (“SRITA”), an inter-
 5 disciplinary research group devoted to researching the promotional activities of the tobacco
 6 industry. SRITA’s database contains approximately 50,000 original tobacco advertisements.
 7 According to Monsees, JUUL’s advertising was informed by traditional tobacco advertisements,
 8 and SRITA in particular had been very useful to JUUL.⁵²

10 44. It is no secret that a good portion of the Big Tobacco playbook involved targeting
 11 youth. Beginning in the 1950s, Philip Morris—now JUUL’s corporate affiliate—intentionally
 12 marketed cigarettes to young people under the age of 21 to recruit “replacement smokers” to
 13 ensure the economic future of the tobacco industry.⁵³ Philip Morris knew that youth smoking
 14 was essential to the tobacco industry’s success and longevity, as an internal Philip Morris
 15 document makes clear: “It is important to know as much as possible about teenage smoking
 16 patterns and attitudes. Today’s teenager is tomorrow’s potential regular customer, and the
 17 overwhelming majority of smokers first begin to smoke while still in their teens.”⁵⁴ Tobacco
 18 companies have focused on the 14 to 24-year-old age group because “young smokers have been
 19 the critical factor in the growth” of their business.⁵⁵ As the Vice-President of Marketing at R.J.
 20 Reynolds Tobacco Company [“RJR”] explained in 1974, the “young adult market . . .
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25 ⁵² Jackler et al., *supra* note 42 at 27.

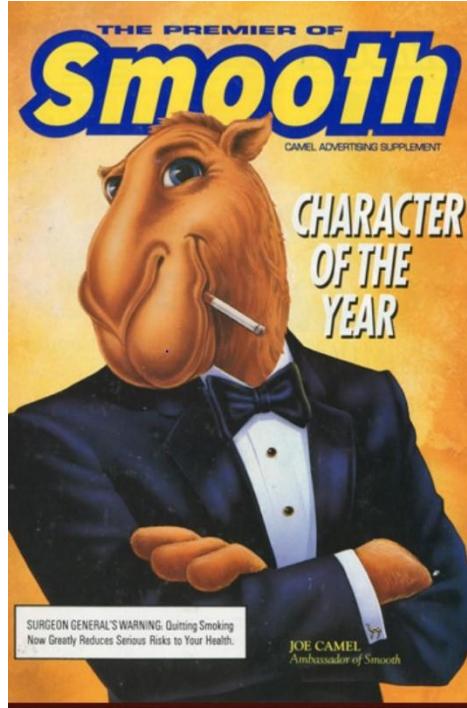
26 ⁵³ Amended Final Opinion at 972, *U.S. v. Philip Morris*, No. 99- 2496 (D.D.C. Aug. 17, 2006), ECF No. 5750.

27 ⁵⁴ *Tobacco Company Quotes on Marketing to Kids*, Campaign for Tobacco-Free Kids (May 14, 2001),
<https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>.

28 ⁵⁵ *Id.*

1 represent[s] tomorrow's cigarette business. As this 14-24 age group matures, they will account
 2 for a key share of the total cigarette volume—for at least the next 25 years.”⁵⁶

3 45. RJR's now- infamous Joe Camel “ambassador of Cool” advertising campaign,
 4 which ran from 1988 through 1997, exemplifies the importance the tobacco industry placed on
 5 hooking young smokers early:⁵⁷



18 46. Big Tobacco, of course, is now prohibited from employing these tactics and
 19 strategies to market traditional cigarettes by virtue of the Master Settlement Agreement and
 20 subsequent regulations. But nothing prevented JUUL from doing so.

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 25 ⁵⁶ C.A. Tucker, *Marketing Plans Presentation to RJRIB of D*, Truth Tobacco Industry Documents, U. of S.F. (Sept.
 30, 1974), <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=ypmw0091>.

26 ⁵⁷ *Joe Camel: Character of the Year Advertisement*, Stanford U. Res. into the Impact of Tobacco Advert. (1990),
 http://tobacco.stanford.edu/tobacco_main/images.php?token2=fm_st138.php&token1=fm_img4072.php&theme_file=fm_mt015.php&theme_name=Targeting%20Teens&subtheme_name=Joe%20Camel.

1 **C. The Secret to JUUL's Success: Hooking Kids**

2 47. Because of Big Tobacco's demonstrated effectiveness at addicting youth to
 3 nicotine, cigarette manufacturers operate under tight restrictions regarding their advertising and
 4 marketing activities. By way of example, cigarette companies may not:

- 5 A. use outdoor advertising such as billboards;
- 6 B. sponsor events;
- 7 C. give free samples;
- 8 D. pay any person to "use, display, make reference to or use as a prop any
 Tobacco Product, Tobacco Product package . . . in any "Media;"
- 9 E. pay any third party to conduct any activity which the tobacco
 10 manufacturer is prohibited from doing; or
- 11 F. sell "flavored" cigarettes.

12 48. All of these above activities were prohibited because of their effectiveness at
 13 appealing to youth. As described below, all of these activities figured prominently in JUUL's
 14 marketing campaign.

15 49. According to Dr. Robert Jackler, an otolaryngologist and professor at Stanford
 16 University School of Medicine and principal investigator for SRITA, JUUL's initial marketing
 17 was "patently youth oriented."⁵⁸ The JUUL's 2015 ad campaign, called "Vaporized" was
 18 designed to create a "cult-like following."⁵⁹ Its imagery featured a vivid color scheme and
 19 models in their twenties in poses that researchers note are evocative of behaviors more
 20 characteristic of underage teens than mature adults.⁶⁰ Dr. Jackler and his colleagues found it

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 25 ⁵⁸ Robert K. Jackler, *The Role of the Company in the Juul Teen Epidemic, Testimony of Robert Jackler before the*
 House Subcommittee on Economic and Consumer Policy ("Jackler Testimony") at 2 (July 24, 2019),
 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Jackler%20Testimony.pdf>.

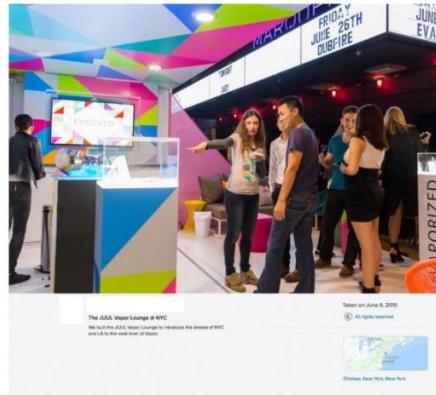
26 ⁵⁹ *Id.* at 4.

60 Jackler et al., *supra* note 42.

1 “clear” that this imagery resonated with underage teens who aspire to emulate trendsetting young
 2 adults.⁶¹

3 50. Tobacco advertisers have long understood that teens are attracted to such imagery.
 4 The Vaporized campaign was featured on the front page of VICE magazine, “the #1 youth media
 5 company in the world.”⁶² In the summer of 2015, an animated series of Vaporized billboards,
 6 with the campaign’s youth-appealing imagery, were displayed in New York’s Times Square.⁶³
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8 51. Over the first year after JUUL launched its ad campaign in June 2015, it held a
 9 series of at least 50 highly stylized parties, typically with rock music entertainment, in cities
 10 across the United States.⁶⁴ Thousands of young people were given free nicotine-filled JUULpods
 11 (appropriately named “JUUL starter kits”), and JUUL posted photos of various young people
 12 enthusiastically puffing on JUULs across their social media channels.⁶⁵ JUUL also featured
 13 popular stars such as Katy Perry holding a JUUL at the Golden Globes.⁶⁶
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22 61 *Id.* at 7.
 23 62 *Id.* at 5.
 24 63 *Id.* at 17-18.
 25 64 *Id.* at 3.
 65 *Id.*

66 *Jackler Testimony, supra* note 58 at 8.

26 67 Kathleen Chaykowski, *The Disturbing Focus of Juul’s Early Marketing Campaigns*, Forbes (Nov. 16, 2018), <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9.>



21 52. JUUL knew these images would be successful in achieving this result because it
22 intentionally crafted them to mimic specific traditional tobacco advertisements that Big Tobacco
23 had used to target teens. In fact, many of JUUL's ads are nearly identical to old cigarette ads that
24 were designed to get teens to smoke. Like its Big Tobacco predecessors, the focus of JUUL's
25 initial marketing was on colorful ad campaigns using eye-catching designs and youth-oriented

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1 imagery with themes of being cool, carefree, stylish, attractive, sexy, and popular—unusual
 2 themes and images if one's objective is to promote an adult's only smoking cessation device.



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17 53. JUUL used Big Tobacco's advertising imagery, but coupled it with a modern,
 18 state-of-the-art marketing campaign designed to target youth. It relied heavily on social media,
 19 crafting a powerful online presence, which persists even after JUUL deleted its accounts in the
 20 face of mounting public scrutiny. JUUL was particularly active on Instagram, which is the most
 21 popular social media site among teens.⁷⁰ JUUL cultivated hashtags, allowing it to blend its ads in

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 24 ⁶⁸ *Virginia Slims vs Juul Advertisement*, Stanford U. Res. into the Impact of Tobacco Advert. (2015),
 25 http://tobacco.stanford.edu/tobacco_main/images-comp.php?token2=fm_tn_st328.php&token1=fm_tn_img10799.php&theme_file=fm_tn_mt035.php&theme_name=Cigs%20vs.%20eCigs&subtheme_name=Cigs%20vs%20eCigs%20JUUL.

26 ⁶⁹ Julia Belluz, *The Vape Company Juul Said It Doesn't Target Teens. Its Early Ads Tell a Different Story*, Vox (Jan. 25, 2019), <https://www.vox.com/2019/1/25/18194953/vape-juul-e-cigarette-marketing>.

⁷⁰ Jackler et al., *supra* note 42.

1 with wide range of user content, increasing exposure while concealing the commercial nature of
 2 the content.⁷¹ JUUL then used hashtags to reinforce the themes it crafted in its product design,
 3 like #style, #technology, #smart, and #gadget. JUUL's hashtags attracted an enormous
 4 community of youthful posts on a wide array of subjects. According to Dr. Jackler, #Juul
 5 contains literally thousands of juvenile postings, and numerous Instagram hashtags contain the
 6 JUUL brand name.⁷²

8 54. Even after JUUL halted its own social media posts in November 2018, viral peer-
 9 to-peer promotion among teens insured continued corporate and product visibility among
 10 youth.⁷³ In fact, community posts about JUUL increased after JUUL itself quit social media in
 11 the Fall of 2018. Prior to November 2018, over a quarter of a million posts appeared. In the eight
 12 months *after* JUUL halted its promotional postings, the rate of community postings increased
 13 significantly, resulting in the number of posts doubling to over half a million.⁷⁴

15 55. JUUL also paid social media influencers to post photos of themselves with JUUL
 16 devices and to use the hashtags that it was cultivating.⁷⁵ JUUL entered a contract with an
 17 advertising agency specifically to identify and recruit social media influencers that had at least
 18 30,000 followers to, according to an internal JUUL email, "establish a network of creatives to
 19 leverage as loyalists" for the JUUL brand.⁷⁶ One such influencer was Christina Zayas, whom
 20 JUUL paid \$1,000 for just one blog post and one Instagram post in the Fall of 2017.

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 23 ⁷¹ *Id.* at 23.

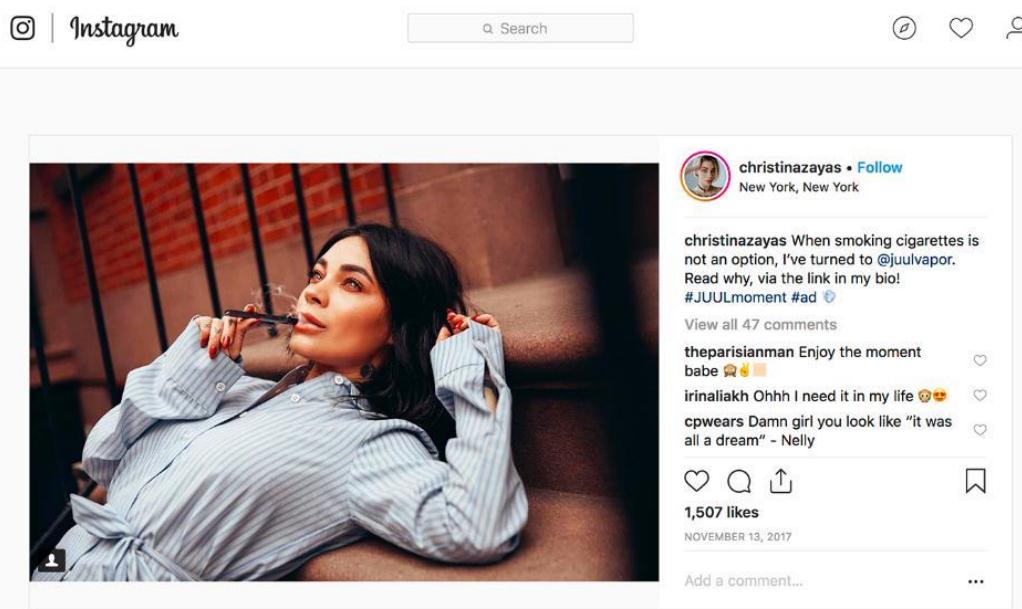
24 ⁷² *Jackler Testimony, supra* note 58 at 10.

25 ⁷³ *Id.* at 11.

26 ⁷⁴ *Id.*

27 ⁷⁵ Jackler et al., *supra* note 42.

28 ⁷⁶ Kenrick Cai, *Juul Funded High Schools, Recruited Social Media Influencers To Reach Youth, House Panel*
 29 *Charges*, Forbes (July 25, 2019), <https://www.forbes.com/sites/kenrickcai/2019/07/25/juul-high-schools-influencers-reach-youth-house-investigation/#57735a4a33e2>.



FROM CHRISTINAZAYAS/INSTAGRAM

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12 56. JUUL instituted an “affiliate program” to recruit those who authored favorable
 13 reviews of its products by providing such reviewers with a 20% discount of purchases of JUUL
 14 products.⁷⁸ It even recruited JUUL users to act as part of their marketing team by asking users to
 15 “refer a friend and get a discount.”⁷⁹

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 17 57. Such tactics masked what were in fact JUUL advertisements as user content,
 18 further increasing exposure and ultimately solidifying the company in teen pop culture as a form
 19 of cultural currency. JUUL’s strategy was so successful in embedding its products into pop
 20 culture that it entered the vernacular as a verb. The JUUL device and the term “juuling” are so
 21 pervasive that JUUL effectively eliminated not only competitors, but also any potentially
 22 alarming terms like “smoking” or “e-cigarette,” which could alert users to the true nature of the
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25 77 Michael Nedelman et al., *#Juul: How social media hyped nicotine for a new generation*, CNN Health (Dec. 19,
 26 2018), <https://www.cnn.com/2018/12/17/health/juul-social-media-influencers/index.html>.

78 *Id.* at 9-10.

79 *Id.* at 9.

1 device or activity. A recent study found that 63% of adolescent JUUL users did not know that
 2 JUULpods contain nicotine.⁸⁰ This has worked to JUUL's advantage and was in fact a deliberate
 3 part of its strategy. In the first year after its launch, not one of JUUL's 171 promotional
 4 emails said anything about nicotine content,⁸¹ and it did not include nicotine warnings on the
 5 JUUL packaging until August 2018, when it was forced to do so.
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7 58. The design of JUUL's product is also acutely attractive to youth. Unlike most of
 8 its predecessors, JUUL looks nothing like a cigarette. Instead, JUUL is sleek and linear and
 9 seems like the latest tech invention. This is not surprising, given the founders' Silicon Valley
 10 product design education and training. JUUL co-founder Adam Bowen drew on his experience
 11 as a design engineer at Apple to make JUUL's design mimic technology children were already
 12 familiar with, like Apple's I-Phone.⁸² This made JUULs look "more like a cool gadget and less
 13 like a drug delivery device. This wasn't smoking or vaping, this was JUULing."⁸³ The evocation
 14 of technology makes JUUL device familiar and desirable to the younger tech-savvy generation,
 15 particularly teenagers. According to 19-year-old Michelle Williams, "our Grandma's have
 16 iPhones now, normal kids have JUULs now. Because it looks so modern, we kind of trust
 17 modern stuff a little bit more so we're like, we can use it, we're not going to have any trouble
 18 with it because you can trust it."⁸⁴ 15-year-old Sam Friedman agrees: "The tech aspect definitely
 19 helps people get introduced to it and then once they're introduced to it, they're staying, because
 20 they are conditioned to like all these different products. And then this is another product. And it's
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23 ⁸⁰ *Juul e-Cigarettes Gain Popularity Among youth, But Awareness of Nicotine Presence Remains Low*, Truth
 24 Initiative (Apr. 18, 2018), <https://truthinitiative.org/sites/default/files/media/files/2019/03/JUUL-E-cigarettes-Gain-Popularity-Among-Youth-But-Awareness-of-Nicotine-Presence-Remains-Low.pdf>.

25 ⁸¹ Jackler et al., *supra* note 42 at 25.

26 ⁸² *How JUUL made nicotine go viral*, Vox (Aug. 10, 2018), <https://www.youtube.com/watch?v=AFOpoKBUyok>.

27 ⁸³ *Id.*

28 ⁸⁴ *Id.*

1 just another product. Until you're addicted to nicotine."⁸⁵

2 59. The JUUL device even has features reminiscent of youth-oriented tech culture
 3 and gaming, like "secret" features users can unlock, such as making the indicator light flash
 4 rainbow colors in "party mode." JUUL has been so successful in emulating technology that the
 5 small, rectangular devices are often mistaken for—or passed off as—flash drives. According to
 6 one senior at Eastlake High School in Washington State, "that's what people tell the teachers a
 7 lot, too, if you charge it in class, they'll just say it's my flash drive."⁸⁶

8 60. The ability to conceal a JUUL is also part of the appeal for adolescents. The
 9 devices are small and slim, so they fit easily in a closed hand or a pocket. The ease and
 10 simplicity of use—there is nothing to light or unwrap, not even an on-off switch—also make it
 11 possible to covertly use a JUUL behind a turned back, which has become a trend in many
 12 schools. Officer Jeff Borshiem of the Bellevue Police Department in Washington said JUUL use
 13 is "incredibly prevalent in schools," including both Bellevue High School and in middle schools,
 14 and that it is hard to catch them in the act because JUUL doesn't produce a big vapor cloud.
 15 Borsheim told KOMO News that students will "just take a little hit or puff off them and then can
 16 hold the vapor in their mouth for a little while . . . There's minimal vapor. They'll also just blow
 17 into their sleeve or into their hoodie."⁸⁷ Finding new ways to hide the ever-concealable JUUL
 18 has spawned products designed just for that purpose, such as apparel that allows the wearer to
 19 use the device while it is concealed in the drawstring of a hoodie or the strap of a backpack.⁸⁸

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 24 ⁸⁵ *Id.*

25 ⁸⁶ *Juuling at School*, KOMO News (2019), <https://komonews.com/news/healthworks/dangerous-teen-trend-juuling-at-school>.

26 ⁸⁷ *Id.*

27 ⁸⁸ Evie Blad, '*Juuling*' and Teenagers: 3 Things Principals and Teachers Need to Know, Educ. Wk. (July 18, 2018), <https://www.edweek.org/ew/articles/2018/07/18/juuling-and-teenagers-3-things-principals-and.html>.

1 61. JUUL also created special flavors that make its addictive, high-tech device even
 2 more attractive to adolescents. Tobacco companies have known for decades that flavored
 3 products are key to nicotine adoption by youth. A 1972 Brown & Williamson memorandum:
 4 “Youth Cigarette – New Concepts,” specifically noted the “well known fact that teenagers like
 5 sweet products.”⁸⁹ A 1979 Lorillard memorandum concluded that younger customers would be
 6 “attracted to products with ‘less tobacco taste,’” and even proposed borrowing data from the “Life
 7 Savers” candy company to determine which flavors enjoyed the widest appeal among youth.⁹⁰
 8 According to 2004 data, 17-year-old smokers were more than three times likely as those over 25
 9 to smoke flavored cigarettes and viewed flavored cigarettes as safer.⁹¹ For this reason, in 2009
 10 the FDA banned flavored cigarettes pursuant to its new authority under the Family Smoking
 11 Prevention and Tobacco Control Act of 2009. In announcing the ban, FDA Commissioner Dr.
 12 Margaret Hamburg declared that “flavored cigarettes are a gateway for many children and young
 13 adults to become regulator smokers.”⁹² A 2017 study of the cigarette flavor ban found that the
 14 ban was effective in lowering both the number of smokers and the amount smoked by smokers,
 15 though it was associated with an increased use of menthol cigarettes (the only flavor still
 16 available).⁹³

20 89 Marketing Innovations, Inc., *Brown & Williamson Tobacco Corp. Project Report: Youth Cigarette—New*
 21 *Concepts*, U.C.S.F. Truth Tobacco Industry Documents (Sept. 1972), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=hzpd0040>.

22 90 *Flavored Tobacco FAQs*, Students Working Against Tobacco (citing Sedgefield Idea Sessions 790606-790607.
 23 June 8, 1979. Bates No. 81513681/3691) <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf> (as of Oct. 16, 2019).

24 91 Gardiner Harris, *Flavors Banned From Cigarettes to Deter Youth*, N.Y. Times (Sept. 22, 2009)
<https://www.nytimes.com/2009/09/23/health/policy/23fda.html>.

25 92 *Id.*

26 93 Charles J. Courtemanche et al., *Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use*, Am. J. of
 Preventive Med. 52(5):e139 - e146 (2017), <https://tobacco.ucsf.edu/more-evidence-support-eliminating-flavors-reduce-youth-cigarette-and-e-cigarette-use>; MB. Harrell et al., *Flavored e-cigarette use: Characterizing youth,*

1 62. The use of flavors with e-cigarettes is just as problematic. According to the
 2 Surgeon General, 85% of adolescents who use e-cigarettes use flavored varieties.⁹⁴ Studies also
 3 show that flavors motivate e-cigarette initiation among youth,⁹⁵ and that youth are much more
 4 likely to use flavored tobacco products than adults are.⁹⁶ As Scott Neal, the tobacco prevention
 5 program manager for Public Health Seattle & King County, put it: “I don’t think it’s rocket
 6 science: We know flavors attract kids.”⁹⁷ In September 2019, the State of Michigan banned
 7 flavored e-cigarettes, a step the governor said was needed to protect young people from the
 8 potentially harmful effects of vaping, Governor Andrew Cuomo of New York announced that he
 9 would pursue emergency regulations to ban the sake of flavored e-cigarettes, and Washington
 10 Governor Jay Inslee ordered the Washington State Department of Health to ban all flavored
 11 vapor products.^{98, 99}

12 63. Despite JUUL’s claims that its target market is adult smokers, JUUL sold its
 13 product in flavors like Cool Mint, Crème Brulee, Fruit Medley, Cucumber, and Mango. These
 14 flavors undoubtedly made it easier for countless adolescents to start using JUUL products.

15 *young adult, and adult users*, *Prev. Med Rep.* 2017; 5: 33–40 (Nov. 11, 2016), doi:
 16 10.1016/j.pmedr.2016.11.001 PMCID: PMC5121224.

17 ⁹⁴ *E-Cigarette Use Among Youth and Young Adults*, U.S. Dept. of Health & Human Servs. (2016),
 18 <https://www.ctclearinghouse.org/Customer-Content/www/topics/2444-E-Cigarette-Use-Among-Youth-And-Young-Adults.pdf> (accessed Oct. 4, 2019).

19 ⁹⁵ Karl Paul, *Flavored Vapes Lure Teens Into Smoking and Nicotine Addiction, Study Shows*, MarketWatch (Feb.
 20 26, 2019), <https://www.marketwatch.com/story/flavored-vapes-lure-teens-into-smoking-and-nicotine-addiction-study-shows-2019-02-25>.

21 ⁹⁶ A.C. Villanti et al., *Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study*, 53 Am. J. of Preventative Med. 139 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/28318902>.

22 ⁹⁷ Radil, *supra* note 10.

23 ⁹⁸ Jesse McKinley & Christina Goldbaum, *New York Moves to Ban Flavored E-Cigarettes by Emergency Order*, N.Y. Times (Sept. 15, 2019), <https://www.nytimes.com/2019/09/15/nyregion/vaping-ban-ny.html?smid=nycore-ios-share>.

24 ⁹⁹ Jay Inslee, *Executive Order 19-03: Addressing the Vaping Use Public Health Crisis*, State of Washington Office
 25 of the Governor (Sept. 27, 2019), https://www.governor.wa.gov/sites/default/files/19-03%20-%20Addressing%20the%20Vaping%20Public%20Health%20Crisis%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery.



JUUL [@JUULvapor](#) · 28 Aug 2017
Do you brûlée? RT if you enjoy dessert without the spoon with our Creme Brûlée
[#JUUL.pods](#) bit.ly/2wvDk38



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64. The flavors pose dangers beyond luring young people into trying nicotine. Studies now show these sweet and fruity flavors present distinct additional health hazards. Researchers have found that some of the chemicals JUUL uses for flavor and perfume—particularly in the

¹⁰⁰ Chaykowski, *supra* note 67.

1 Crème Brulee flavor—contain relatively high levels of acetals.¹⁰¹ Acetals are airway-irritating
 2 chemicals that may cause lung damage.¹⁰² Dr. Robert Jackler said that test results have shown
 3 that JUUL’s sweet and fruity flavors “contribute[] to the increasing body of evidence
 4 documenting toxicological effects of e-cig vapor.”¹⁰³

5 65. JUUL was well aware from the beginning that its products would appeal to youth.
 6 A former JUUL manager, who spoke to *The New York Times* on the condition that his name not
 7 be used because he worried about facing the ire of the company, said that within months of
 8 JUUL’s 2015 introduction, it became evident that teenagers were either buying JUULs online or
 9 finding others who made the purchases for them. Some people bought more JUUL kits on the
 10 company’s website than they could individually use—sometimes 10 or more devices at a time.
 11 “First, they just knew it was being bought for resale,” said the former senior manager, who was
 12 briefed on the company’s business strategy. “Then, when they saw the social media, in fall and
 13 winter of 2015, they suspected it was teens.”¹⁰⁴

14 66. This “suspicion” has been confirmed by the U.S. Surgeon General, who found
 15 that JUUL’s Twitter account was being followed by adolescents and that 25% of those re-
 16 tweeting official JUUL tweets were under 18 years old.¹⁰⁵ It is clear that JUUL, like Philip
 17 Morris and RJR before it, targeted youth as a key business demographic. Unsurprisingly, JUUL’s
 18
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23 ¹⁰¹ Susie Neilson, *Irritating Compounds Can Show Up in ‘Vape Juice’*, NPR (July 30, 2019),
 24 <https://www.npr.org/sections/health-shots/2019/07/30/746238009/irritating-compounds-discovered-in-vape-juice>.

25 ¹⁰² *Id.*

26 ¹⁰³ *Id.*

27 ¹⁰⁴ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?*, N.Y. Times (Aug. 27,
 28 2019), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

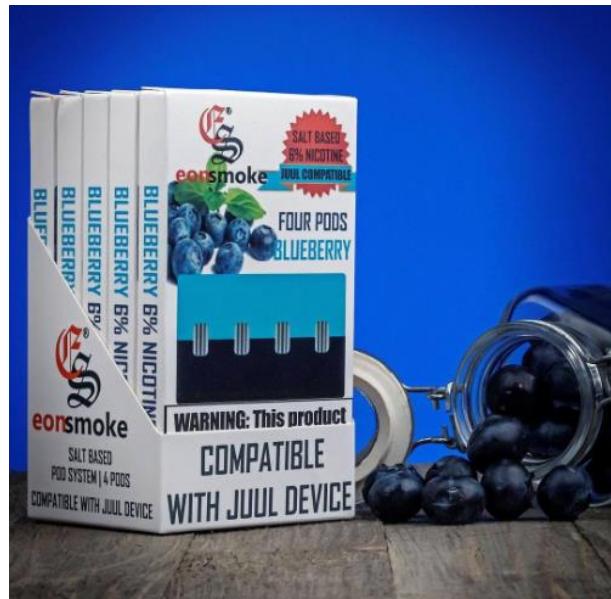
29 ¹⁰⁵ Adams, *supra* note 2.

1 efforts to follow these pages of Big Tobacco's playbook has yielded results: a recent study found
 2 that 15 to 17-year-olds are *16 times* more likely to use JUUL than 25 to 34-year-olds.¹⁰⁶

3 D. Eonsmoke Capitalizes on JUUL's Success

4 67. Defendant Eonsmoke took notice of JUUL's successful marketing to youth and
 5 saw it as an opportunity to profit.

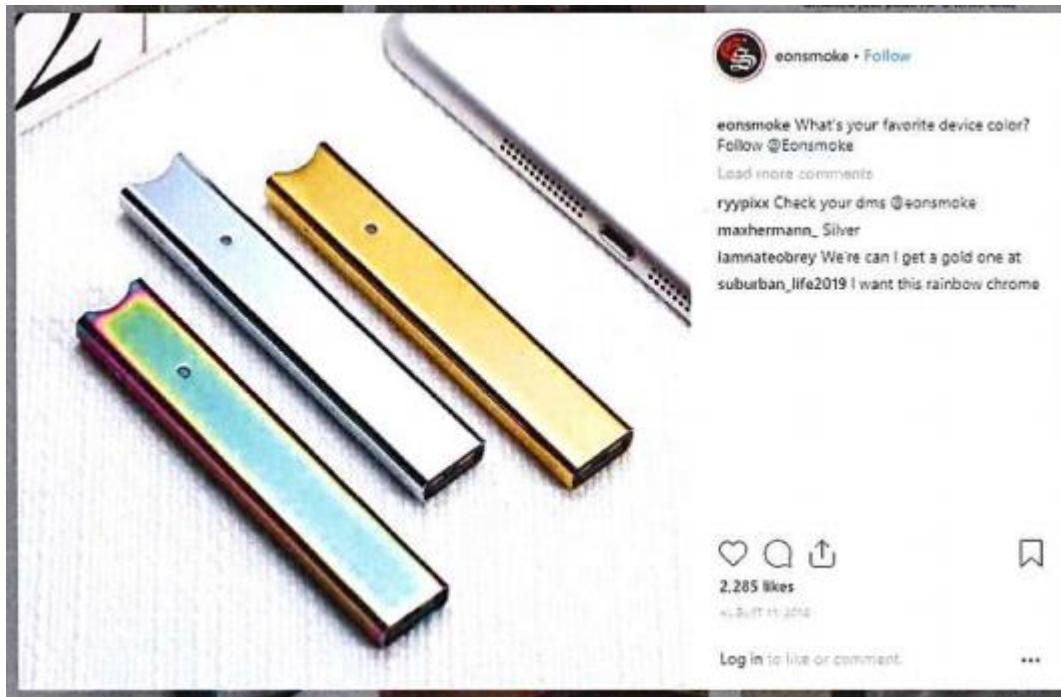
6 68. Eonsmoke designs, markets, and distributes electronic cigarettes & accessories.
 7 Eonsmoke makes its own electronic vaping device that resembles the JUUL's device. Eonsmoke
 8 also makes both closed systems pods, like those sold by JUUL, and open system pods that can be
 9 filed by the user. Both Eonsmoke's device and its pods are advertised as JUUL compatible,
 10 meaning that users can use Eonsmoke's device to vape JUULpods and they can also use JUUL's
 11 device to vape Eonsmoke's pods:¹⁰⁷
 12



23 106 D.M. Vallone et al., *Prevalence and correlates of Juul use among a national sample of youth and young adults*,
 24 *Tobacco Control* (Oct. 29, 2018), <http://dx.doi.org/10.1136/tobaccocontrol-2018-054693>.

25 107 Eonsmoke Vapes, Tumblr (June 4, 2018), <https://eonsmoke.tumblr.com/post/174567212961/mango-pods-6-tastes-like-a-sweet-and-crisp> (showing Eonsmoke mango pods compatible with Juul Device, captioned by Eonsmoke as "Mango Pods 6%. Tastes like a sweet and crisp Mango! Follow @Eonsmoke"); Eonsmoke Vapes, Tumblr (June 18th, 2018), <https://eonsmoke.tumblr.com/post/175012943246/blueberry-6-restocked-on-the-sites-grab-yours> (showing Eonsmoke blueberry pods compatible with Juul Device; captioned by Eonsmoke as "Blueberry 6% restocked on the sites! Grab yours today while supplies last! Follow @Eonsmoke").

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2
3 69. Below is an image of the Eonsmoke device:¹⁰⁸
4

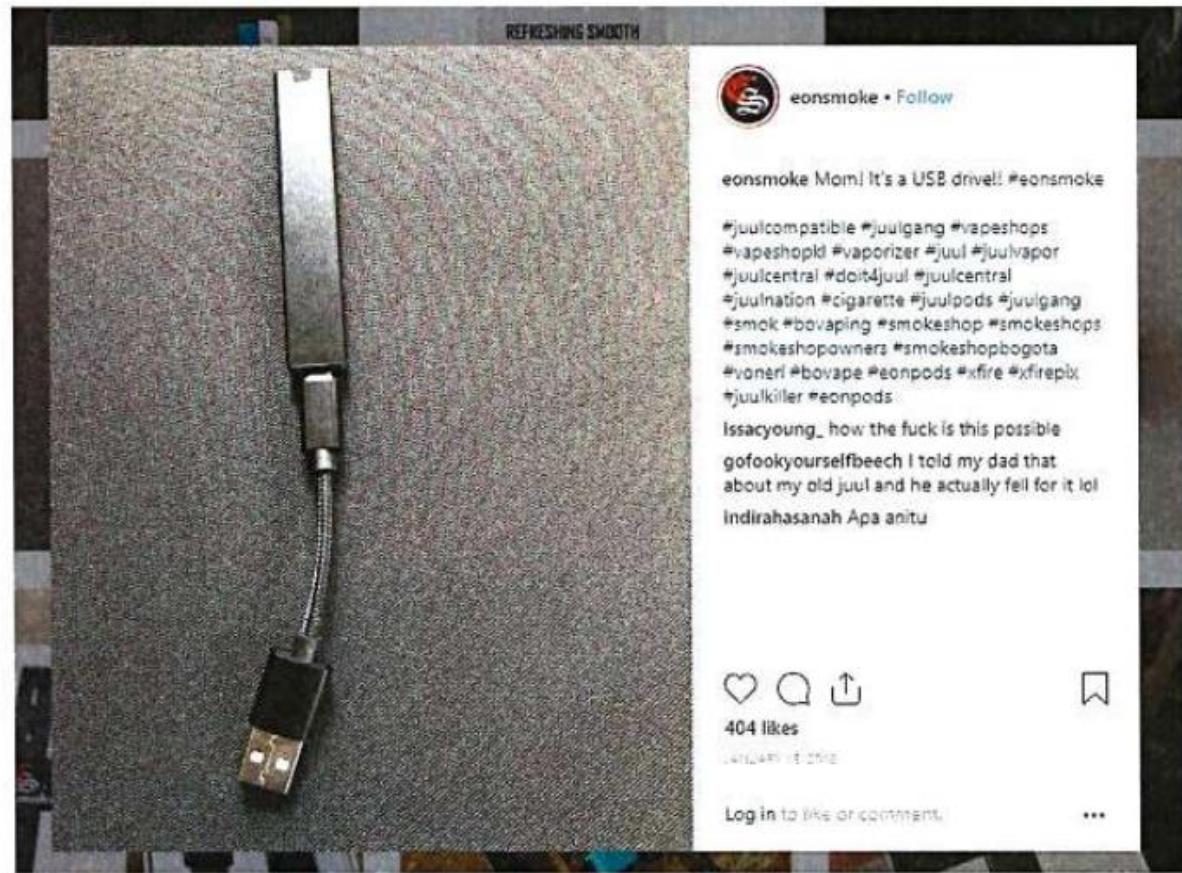


16 70. Like JUUL’s device, Eonsmoke’s devices resemble flash drives. Eonsmoke
17 explicitly capitalized on this fact by advertising that users of its products could lie to their parents
18 and pretend the product was a flash drive. In a post on Eonsmoke’s Instagram page, the company
19 posted a photograph of its device with the caption “Mom! It’s a USB drive!! #eonsmoke.”¹⁰⁹ On
20 this post, one user comments “I told my dad that about my old juul and he actually fell for it
21 lol.”¹¹⁰

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26 ¹⁰⁸ Post by Instagram user “eonsmoke” on August 11, 2018.

¹⁰⁹ Post by Instagram user “eonsmoke” on January 15, 2018.

¹¹⁰ *Id.*



16 71. Although the official “eonsmoke” Instagram account is now deleted, on Tumblr,
 17 another social media platform, an account called “Eonsmoke Vapes” contains links and images
 18 of Instagram posts that appear to have been originally posted by Eonsmoke. Each linked
 19 Instagram post is now-deleted. This Tumblr user holds itself out as Eonsmoke’s official page.¹¹¹
 20 These posts show Eonsmoke frequently played into the idea that its product looked like a
 21 flashdrive:¹¹²

23
 24 ¹¹¹ The “Eonsmoke Vapes” Tumblr page uses Eonsmoke’s logo and the page’s bio says “Buy Eonsmoke e juices at
 25 an incredibly [sic] price. Also check out our Juul compatible e-cig pods in six flavors available now! Visit
 https://www.enosmoke.com.” The page is available at this website: https://eonsmoke.tumblr.com/.

26 ¹¹² Eonsmoke Vapes, Tumblr (June 26, 2018), <https://eonsmoke.tumblr.com/post/175286181941/2018-we-smoking-purple-flash-drives-eonsmoke> (showing purple vape; captioned by Eonsmoke as ““2018 we smoking purple flash drives’- @eonsmoke”); Eonsmoke Vapes, Tumblr (Apr. 16, 2018), <https://eonsmoke.tumblr.com/post/172997769276/red-devices-now-restocked-and-available-on> (showing red vape



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12 "2018 we smoking purple flash drives" - @eonsmoke



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15 Red devices now restocked and available on Eonsmoke.com! Vape
16 Eon! @eonsmoke
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72. Eonsmoke has tapped into the youth social media network JUUL created by marketed to users of JUUL. Eonsmoke advertised its product as JUUL compatible and used hashtags to connect itself to JUUL, including "#juulcompatible" "#juulgang" "#juul" "#doit4juul" and "#juulnation" among others, as shown in the Instagram post above.¹¹³

25 next to soda can with text "Smoke flashdrives all 2018); captioned by Eonsmoke as "Red devices now restocked and available on Eonsmoke.com! Vape Eon! @eonsmoke".

26¹¹³ This advertising has been so pervasive that Eonsmoke has even been sued by JUUL for patent infringement. See Verified Complaint ("Eonsmoke N.J. Compl."), *JUUL Labs, Inc. v. Eonsmoke et al.*, No. 19- 08405 (D.N.J. Mar. 12, 2019).

1 Similarly, in a post on the “Eonsmoke Vapes” Tumblr, Eonsmoke’s device and blueberry pods
 2 are marketed as “sexy” and tagged with “#juul” “#juulgang” “#juulnation” “#doit4juul” among
 3 other tags. Eonsmoke also told users to “[f]ollow” them for sales and giveaways, even though the
 4 FDA has banned free samples of e-cigarette products:¹¹⁴



15 So sexy! What do you guys think?

16 Follow @eonsmoke for sales and giveaways!

17 #juul #juulgang #juulnation #juulcentral #doit4juul #doit4state
 #kangertech #kanger #aspirebreeze #aspirebreezekit #xfire
 #xfirevape #bovaping #bovape #bovapingus #smokeshop
 #vapeshop #vapor #vaporshop #smoktech #sourin #sourinair
 #sourindrop #bouldervape #mrsalte

20 ¹¹⁴ Eonsmoke Vapes, Tumblr (Feb. 13, 2018), <https://eonsmoke.tumblr.com/post/170841792591/so-sexy-what-do-you-guys-think-follow> (showing red vape and Eonsmoke blueberry pods, captioned by Eonsmoke “So sexy! What
 21 do you guys think? Follow @eonsmoke for sales and giveaways! #juul #juulgang #juulnation #juulcentral
 #doit4juul #doit4state #kangertech #kanger #aspirebreeze #aspirebreezekit #xfire
 #xfirevape #bovaping #bovape #bovapingus #smokeshop
 #vapeshop #vapor #vaporshop #smoktech #sourin #sourinair #sourindrop #bouldervape
 #mrsalte”); see also Eonsmoke Vapes, Tumblr (Feb. 10, 2018), <https://eonsmoke.tumblr.com/post/170724357236/we-are-doing-a-quick-weekend-juice-giveaway-of-our> (showing
 22 different flavor vape juice with text “Eonsmoke 60mg Juice Giveaway Tag a Friend Now!!”, captioned by
 Eonsmoke “We are doing a quick weekend Juice giveaway of our made in USA 60mg salt nicotine vape juice!!!
 Giveaway ends Sunday 11:59 EST February 11th. The rules: 1. Follow @Eonsmoke 2. Tag a friend who vapes!
 More friends you tag the better your chances of winning!!! We will give away 4 bottles of 30ml juice!!!!!!!”);
 23 see also Eonsmoke Vapes, Tumblr (Feb. 10, 2018), <https://eonsmoke.tumblr.com/post/170725145496/you-probably-know-the-rules-by-now-we-are> (showing three vape devices with text “Gonna giveaway some devices
 24 too!!!!!! Follow @eonsmoke and tag a friend! Free devices giveaway!!!”, captioned by Eonsmoke “You probably
 know the rules by now.... we are feeling pretty generous! Hope you guys win something!!!! #eonsmoke

1 73. Eonsmoke's "Doit4juul" account on Instagram was the most-followed JUUL
 2 account on Instagram, with over 81,000 followers as of February 2018.¹¹⁵ On YouTube, one of
 3 the "Doit4juul" videos had nearly 192,000 views as of March 2018.¹¹⁶ The "Doit4juul"
 4 campaign called on followers to share pictures or videos of themselves using JUUL.
 5

6 74. In addition to driving social media posts about JUUL and vaping, Eonsmoke
 7 targeted the youth market by selling its pods in fruity flavors and its nicotine salts in flavors such
 8 as "Sour Gummy Worms," "Gummy Bear," "Donut Cream," "Pineapple Crush," "Cotton
 9 Candy" and more:¹¹⁷



10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26
 Salt Nicotine Sour Gummy Worms 60mg Or 30mg E Juice E
 Liquid 30ML



Gummy Bear 30ML 60mg Or 30mg Salt Nicotine E Juice E
 Liquid

#vapegiveaway #vapegiveaways #pods #podsgiveaways #vapegiveaways #vapegiveaway #podsgiveaways
 #eonsmoke #pods").

¹¹⁵ Jidong Huang et al., *Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market*, *Tob Control* 2019;28:146–151. doi:10.1136/tobaccocontrol-2018-054382.

¹¹⁶ *Id.*

¹¹⁷ Eonsmoke Vapes, Tumblr (June 12, 2018), <https://eonsmoke.tumblr.com/post/174824533561/sour-gummies-60mg-restocked-today-online-and> (showing Sour Gummy Worm salt nicotine vape juice, captioned by Eonsmoke "Sour Gummies 60mg restocked today online and through our vendors! Follow @Eonsmoke for more stock, vape developments, and new flavors"; *see also* Eonsmoke Vapes, Tumblr (July 1, 2018), <https://eonsmoke.tumblr.com/post/175446333176/cop-one-of-our-world-class-salt-nicotine-juices-in> (showing Gummy Bear salt nicotine vape juice, captioned by Eonsmoke "Cop one of our world class salt nicotine juices in 60mg. #eonsmoke @eonsmoke"); *see also* Eonsmoke Vapes, Tumblr (June 27, 2018), <https://eonsmoke.tumblr.com/post/175313662276/our-salt-nic-family-of-products-try-one-today-to> (showing salt

1 75. When JUUL was pressured to stop selling certain flavors in stores, Eonsmoke was
 2 more than happy to fill the role. In 2018, Eonsmoke generated an estimated \$5.3 million in
 3 revenue.¹¹⁸ In 2019, after JUUL stopped selling flavors like Mango in stores, Eonsmoke's
 4 business soared, with an estimated \$43.6 million in tracked sales as of mid-July 2019.¹¹⁹

5 76. Eonsmoke followed in JUUL's footsteps by advertising these flavors to youth
 6 using the apps and websites where minors often spend time, including Instagram, Tumblr,
 7 Snapchat, YouTube, and Reddit:¹²⁰



23 nicotine vape juices, captioned by Eonsmoke "Our Salt Nic family of products! Try one today to see what all the
 24 hype is about. Follow @Eonsmoke".

25 ¹¹⁸ Shela Kaplan, '*Juul-alikes*' Are Filing Shelves with Sweet, Teen-Friendly Nicotine Flavors, N.Y. Times (Aug.
 13, 2019), <https://www.nytimes.com/2019/08/13/health/juul-flavors-nicotine.html>.

26 ¹¹⁹ *Id.*

27 ¹²⁰ Eonsmoke Vapes, Instagram (Feb. 3, 2018), (captioned by Eonsmoke "The official vaping brand of Snapchat :)
 #snapchat #eonsmoke #eonpods #juul #juulgang #phix #phixvapor").

1 77. For example, on the social media platform Reddit, user “Eonjuulcompatiblepod”
 2 holds itself out as “Eonsmoke.com Juul Compatible Pods Official Representative” and claims
 3 that “Eonsmoke.com is the 2nd largest pod company in the USA and the top 5 in Salt Nicotine
 4 Bottled eLiquid. Our pods are Juul compatible so you don’t have to buy another device. 7 flavors
 5 including blueberry, watermelon and strawberry.”¹²¹ Eonsmoke used Reddit to try to recruit
 6 JUUL users. For example, Eonsmoke commented that its products are not only compatible with
 7 JUUL but also cheap, a crucial factor for youth who often do not have much money: “Our pods
 8 are compatible with the juul device and our devices are compatible with juul pods and we just
 9 lowered the retail to 20\$ online after coupon.”¹²² In addition, when Reddit users were discussing
 10 what flavors they would like to see JUUL produce and one user stated that they would like a
 11 watermelon flavor, Eonsmoke responded: “We make watermelon. Step over to the dark side!”¹²³

14 ↑ r/juul · Posted by u/12gwar18 Cool Mint 1 year ago ▾
 15 16 What flavors do you guys wanna see next from JUUL?
 16 ↓ I personally would like a banana flavor
 17 45 Comments Share Save Hide Report 100% Upvoted
 18 This thread is archived New comments cannot be posted and votes cannot be cast
 19 SORT BY BEST ▾
 20 ↑ pikachu661 Cool Cucumber 29 points · 1 year ago
 21 ↓ Watermelon
 21 ↑ Eonjuulcompatiblepod 1 point · 1 year ago
 22 ↓ We make watermelon. Step over to the dark side! ☺

23
 24 ¹²¹ Eonsmoke (@Eonjuulcompatiblepod), Reddit, <https://www.reddit.com/user/Eonjuulcompatiblepod> (accessed 7 Nov, 2019).

25 ¹²² Eonsmoke (@Eonjuulcompatiblepod), Comment to @u/981ti, Reddit (May 21, 2018, 8:43 PM), https://www.reddit.com/r/juul/comments/8k5wfa/are_there_any_other_devices_that_fit_juul_pods/dzeu9sj/?context=3.

26 ¹²³ Eonsmoke (@Eonjuulcompatiblepod), Comment to @u/12gwar18, Reddit (May 21, 2018, 8:26 PM), https://www.reddit.com/r/juul/comments/8kpduj/what_flavors_do_you_guys_wanna_see_next_from_juul/.

1 78. Eonsmoke's social media posts are designed to appeal to youth. For example,
 2 Eonsmoke advertises its product as an accompaniment to candy and posts images popular with
 3 youth in the forms of "memes."¹²⁴



25
 26¹²⁴ Eonsmoke (@eonsmoke), Instagram (May 1, 2018) (showing an Eonsmoke device next to a bag of M&M candies and states "Can you name a better combo?"); *see also* Eonsmoke (@eonsmoke), Instagram (Feb. 25, 2018) (showing a meme featuring a character from the animated show "The Simpsons").

1 79. Eonsmoke's social media also explicitly encouraged users to associate their
 2 products with movies and toys popular with children, such as Toy Story and Monsters Inc.:¹²⁵



18 Wow I love this! Follow @Eonsmoke for sales and giveaways



23 Some Day Time Vibes @krissixx710

24 125 Eonsmoke Vapes, Tumblr (Mar. 19, 2018), <https://eonsmoke.tumblr.com/post/172051155991/wow-i-love-this-follow-eonsmoke-for-sales-and> (showing Eonsmoke device with Woody from the animated film "Toy Story" and blueberry vape pods, captioned by Eonsmoke as "Wow I love this! Follow @Eonsmoke for sales and giveaways"); see also Eonsmoke Vapes, Tumblr (Feb. 16, 2018), <https://eonsmoke.tumblr.com/post/170965631311/the-cotton-candy-60mg-eonsmoke> (showing Eonsmoke devices and nicotine salt vape juice, captioned by Eonsmoke as "The Cotton Candy 60mg! #eonsmoke"); see also Eonsmoke Vapes, Tumblr (Feb. 4, 2018), <https://eonsmoke.tumblr.com/post/170502488296/some-day-time-vibes-krissixx710> (showing Eonsmoke devices and flavor pods, captioned by Eonsmoke as "Some Day Time Vibes @krissixx710").

1
2 80. Eonsmoke also used social media and memes to highlight an “advantage” of their
3 product over JUUL’s□Eonsmoke sells pods in a 6% nicotine variety, more potent than the 5%
4 nicotine pods sold by JUUL.
5

6 81. For example, on one post, Eonsmoke advertised that its “Watermelon 6% Pods”
7 were “Juul compatible with more juice and more nicotine inside every pod!”¹²⁶ Eonsmoke
8 highlighted this difference in several of its social media posts:¹²⁷



Comment Eon below for a follow back! Follow @Eonsmoke



21
22 126 Eonsmoke Vapes, Tumblr (June 26, 2018), <https://eonsmoke.tumblr.com/post/175281868841/try-some-watermelon-6-pods-all-juul-compatible> (showing watermelon vape pods and sunglasses, captioned by Eonsmoke as “Try some Watermelon 6% Pods! All Juul compatible with more juice and more nicotine inside every pod! Follow @Eonsmoke”).
23
24
25
26 127 Eonsmoke Vapes, Tumblr (Apr. 18, 2018), <https://eonsmoke.tumblr.com/post/173080730801/comment-eon-below-for-a-follow-back-follow> (showing person getting hit in the face with a book with text “When people say 6% nic is the same as 5% nic”, captioned by Eonsmoke as “Comment Eon below for a follow back! Follow @Eonsmoke”); see also Eonsmoke Vapes, Tumblr (May 20, 2018), <https://eonsmoke.tumblr.com/post/174088090966/warning-pineapple-pods-contain-nicotine-and-so> (showing pineapple crush vape pods, captioned by Eonsmoke as “WARNING: PINEAPPLE PODS CONTAIN NICOTINE

1 82. At the same time, Eonsmoke attempted to play both sides of the nicotine
 2 difference. While it sometimes advertised that its products contain more nicotine than JUUL, as
 3 shown above, other times it fails to mention nicotine at all. The FDA sent Eonsmoke a warning
 4 letter in October 2019 for, among other things, failing to include the required nicotine warning
 5 statement its posts and posts it pays for by “influencers.”¹²⁸
 6

7 83. Like JUUL, Eonsmoke used “influencers” to advertise its products, including Mia
 8 Khalifa, an Instagram influencer with 17.9 million followers who frequently posts suggestive or
 9 provocative photos and has a large youth audience, Stevie Emerson, who got 6.8 million views
 10 of his YouTube video titled, “Dude, Where’s my JUUL?,” and Donny Karle. Karle is better
 11 known to youth by his handle “DonnySmokes.” As a 21-year-old, Karle was getting about 3
 12 million views each month reviewing vaping products on YouTube, which began in 2017 when
 13 he posted a “unboxing” video of his newly purchased JUUL.¹²⁹ Karle’s videos were plainly
 14 aimed at youth; one was titled, “How to HIDE & HIT Your JUUL at SCHOOL WITHOUT
 15 Getting CAUGHT.”¹³⁰ Eonsmoke’s CEO Michael Tolmach told Vice the company paid Karle
 16 \$1,000 for each review of its products.¹³¹

18 84. As mentioned above, Eonsmoke’s conduct did not go unnoticed. Eonsmoke has
 19 been sued by the Massachusetts and North Carolina Attorneys General and has recently attracted
 20 the attention of the FDA. In addition to Eonsmoke’s omission of nicotine content warnings, the
 21 FDA’s October 2019 letter warned Eonsmoke about its affirmative statements minimizing the
 22

23 AND SO MUCH FLAVOR IT MAY CAUSE YOU TO DROP ALL OTHER TYPES OF BRANDS FOR PODS.
 24 NICOTINE IS AN ADDICTIVE CHEMICAL. Follow @Eonsmoke”).

25 128 *Supra* note 20.

26 129 Allie Conti, *This 21-Year-Old is Making Thousands a Month Vaping on YouTube*, VICE (Feb. 5, 2018),
https://www.vice.com/en_us/article/8xvjm此-21-year-old-is-making-thousands-a-month-vaping-on-youtube.

130 *Id.*

131 *Id.*

1 risks of vaping—specifically that although Eonsmoke is not authorized to claim that its products
 2 are safer than cigarettes, its website boasted that “Eonsmoke electronic cigarettes provide you
 3 with a premium vaping experience without the thousands of harmful chemicals and additives
 4 often found in tobacco cigarettes.”¹³²

5 85. Despite increasing pressuring from state and federal agencies, Eonsmoke was
 6 sold, and still sells, side by side with JUUL and the best-selling cigarette brand in the United
 7 States, Marlboro, a product of Philip Morris and its parent company, Altria.¹³³



22 This is how the Top shelf of the cigarette shelf looks now! Switch
 23 from cigarettes to Eon 6% pods now! #eonsmoke #juul

24
 25 132 FDA, *supra* note 20.

26 133 Eonsmoke Vapes, Tumblr (July 14, 2018), <https://eonsmoke.tumblr.com/post/175887887396>this-is-how-the-top-shelf-of-the-cigarette-shelf> (showing Juuls being sold alongside cigarettes, captioned by Eonsmoke as “This is how the Top shelf of the cigarette shelf looks now! Switch from cigarettes to Eon 6% pods now! #eonsmoke #juul.”; see also Hannah Smothers, *JUUL’s ‘Banned’ Flavors Are Still Absolutely Available in New York City*,

1 **E. Altria and E-Cigarettes**

2 86. Before JUUL's runaway success and the proliferation of copycat "JUUL-
 3 compatible products" like Eonsmoke's, Altria was investing heavily in the e-cigarette market.
 4 Altria entered the e-cigarette market a year before JUUL did. E-cigarettes have been sold in the
 5 United States since the early 2000s, but Big Tobacco did not make its first forays into that space
 6 until a decade later. Big Tobacco—including Altria—has been one of the biggest losers in the
 7 fight against smoking. Altria estimates that the cigarette industry declined by -4% in 2017 and by
 8 -4.5% in 2018. For 2019 through 2023, Altria estimated for the average annual U.S. cigarette
 9 industry volume declines is -4% to -5%.¹³⁴ Altria later revised this estimate in the second quarter
 10 of 2019 from 4-5% to 4-6%, in light of efforts to increase the legal age for cigarette smoking to
 11 21.¹³⁵

12 87. In the face of these numbers, Altria turned to e-cigarettes, along with other "non-
 13 combustible products," to "enhance" its business platform.¹³⁶ Altria boasted to shareholders that
 14 it "aspire[d] to be the U.S. leader in authorized, non-combustible, reduced-risk products."¹³⁷

15 88. Altria entered the e-cigarette market with a cigarette-lookalike, or "cigalike," style
 16 of e-cigarette, sold under the brand MarkTen. Following a phased roll-out of MarkTen in Indiana
 17 and Arizona in late 2013, Altria launched the MarkTen nationwide in 2014 with an aggressive
 18

21 22 VICE (Nov. 4, 2019), https://www.vice.com/en_us/article/xwepnj/juul-pod-banned-flavors-still-available-in-new-york-city (showing JUUL products side by side with Eonsmoke products in stores in New York City in mid-October 2019).

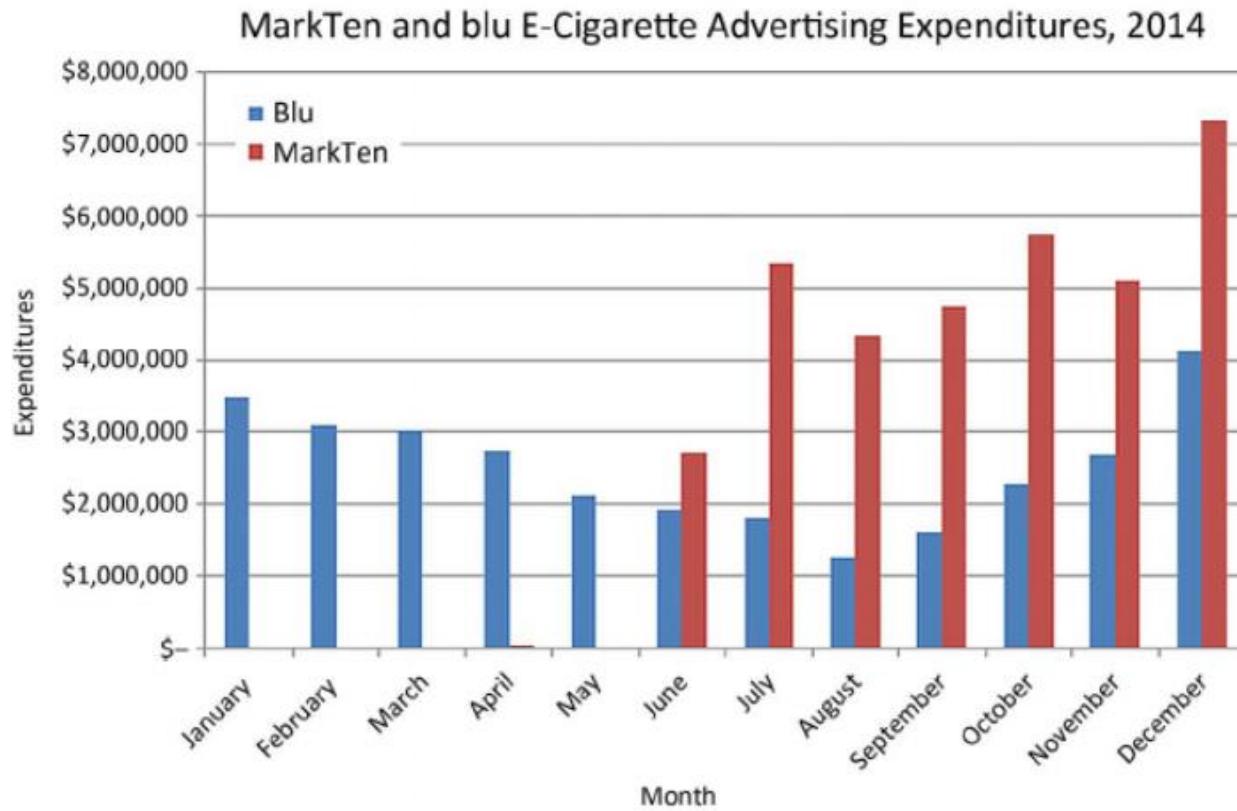
23 24 ¹³⁴ *Altria's Fourth-Quarter 2018 Earnings Conference Call*, Altria (Jan. 31, 2019),
<http://investor.altria.com/Cache/1001247877.PDF?O=PDF&T=&Y=&D=&FID=1001247877&iid=4087349>.

25 26 ¹³⁵ *Altria Shares Slide As Cigarette Sales Continue to Decline*, Tobacco Bus. (July 31, 2019),
<https://tobaccobusiness.com/altria-shares-slide-as-cigarette-sales-continue-to-decline/>.

¹³⁶ *Altria's Second-Quarter 2019 Earning Conference Call*, Altria (July 30, 2019),
<http://investor.altria.com/Cache/1001255076.PDF?O=PDF&T=&Y=&D=&FID=1001255076&iid=4087349>.

¹³⁷ *Annual Meeting of Shareholders*, Altria (May 17, 2018),
<http://investor.altria.com/Cache/1500113050.PDF?O=PDF&T=&Y=&D=&FID=1500113050&iid=4087349>.

1 marketing campaign, eclipsing the advertising expenditures for Imperial Tobacco's e-vapor
 2 product, blu.¹³⁸



1 school and high school age children saw advertisements for e-cigarettes in retail stores and
 2 almost 2 in 5 saw advertisements for e-cigarettes online.¹⁴²

3 90. Altria's MarkTen advertising tag line, "Let It Glow," was criticized by public
 4 health advocates for playing off Disney's popular children's movie "Frozen" and its hit song
 5 "Let It Go."¹⁴³



22 91. Even the then-president of R.J. Reynolds Vapor Company, Stephanie Cordisco,
 23 criticized Altria for irresponsible marketing, calling this tag line "terrible" and saying that the
 24

25
 26

¹⁴² *Id.*

¹⁴³ Matt Richtel, *A Bolder Effort by Big Tobacco on E-Cigarettes*, N.Y. Times (June 17, 2014),
<https://www.nytimes.com/2014/06/17/business/a-bolder-effort-by-big-tobacco-on-e-cigarettes.html>.

1 companies “running the most irresponsible campaigns are the ones who know better.”¹⁴⁴ At the
 2 time, the president of the Campaign for Tobacco-Free Kids said that companies like Altria were
 3 using “exactly the same themes we saw work with kids in the U.S. for decades with
 4 cigarettes.”¹⁴⁵



15 92. Although free samples of tobacco products are prohibited under the terms of the
 16 Tobacco MSA as well as FDA regulations issued in 2010, Altria took advantage of the grey area
 17 in the regulation of e-cigarettes and distributed coupons for free sample nicotine cartridges as
 18 part of its MarkTen launch. (The FDA has since issued finalized guidance clarifying the scope of
 19 the ban on distributing free samples or coupons for e-cigarettes or components.)

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 26 ¹⁴⁴ *Id.*

¹⁴⁵ *Id.*



93. Altria also took full advantage of its distribution network, reaching 60,000 stores
in a month.¹⁴⁶ In Arizona, for example, Altria's distribution network allowed MarkTen to
achieve a 48% e-cigarette market share in just seven weeks after launch, according to then-CEO

146 Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store News (July 22, 2014),
<https://csnews.com/markten-national-rollout-hits-60000-stores>.

1 Marty Barrington's statements on an earnings call.¹⁴⁷ Altria was clear in its intent to dominate
 2 the e-cigarette market as it has the traditional cigarette one: "We are the market leader today and
 3 we will continue to be," Barrington told investors.¹⁴⁸

4 94. Altria began acquiring small companies in the vaping industry, starting in 2014
 5 with Green Smoke, Inc., whose e-cigarettes were also the "cigalike" style.¹⁴⁹ In 2016, Altria
 6 acquired a vape product called Cync, from Vape Forward.¹⁵⁰ Cync is a small vapor device that
 7 uses prefilled pods, similar to JUUL. It also made a minority investment in Avail Vapor, one of
 8 the largest vape store chains in the U.S., which also produces and sells its own branded e-liquids
 9 for so-called open-system devices, which are refillable.¹⁵¹

11 95. In February 2018, with JUUL dominating the e-cigarette market, Altria
 12 announced the national launch of a pod-based, "closed-tank" e-cigarette like the JUUL, which it
 13 branded as the MarkTen Elite: "a pod-based product with a premium, sleek battery design" and
 14 having the "convenience of prefilled, magnetic click pods." Altria had initially brought the Elite
 15 to market in 2016, telling investors that the product "offers a variety of flavorful liquids in a
 16 modern, discrete device format."¹⁵² The product was sold in flavors such as Hazelnut Cream,
 17 Apple Cider, and Strawberry Brulee.¹⁵³ At an analyst conference in February 2018, former Altria
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21 ¹⁴⁷ *Id.*

22 ¹⁴⁸ *Id.*

23 ¹⁴⁹ Mike Esterl, *Altria To Launch MarkTen E-Cigarette Nationally*, Wall St. J. (Feb. 19, 2014),
<https://www.wsj.com/articles/altria-to-launch-markten-e-cigarette-nationally-1392832378>.

24 ¹⁵⁰ Remarks by Jody Begley, 2017 Altria Investor Day (Nov. 2, 2017), http://media.corporate-ir.net/media_files/IROL/80/80855/2017InvestorDay/Remarks_and_Reconciliations.pdf.

25 ¹⁵¹ Timothy S. Donahue, *At the Forefront*, Tobacco Rep. (Dec. 1, 2017),
<https://www.tobaccoreporter.com/2017/12/at-the-forefront/>.

26 ¹⁵² *Supra* note 156 at 18.

153 Angel Abcede, *Altria Introducing Closed Vapor System*, CSP Daily News (Feb. 27, 2018),
<https://www.cspdailynews.com/tobacco/altria-introducing-closed-vapor-system#page=0>.

1 Chief Executive Officer, Marty Barrington, boasted that the Elite's pods held more than twice as
 2 much liquid as JUUL's.¹⁵⁴



96. Altria quickly followed with another pod-based product, the Apex by MarkTen.



97. Because e-cigarettes are subject to more relaxed regulation than cigarettes, Altria was able to market its products in ways it could not have done for traditional tobacco products. Altria marketed its e-cigarettes in flavors that would appeal to youth: Strawberry Brulee, Apple Cider, Hazelnut Cream, Spiced Fruit, Piña Colada, Glacier Mint, and Mardi Gras (apparently a mixed berry flavor). Most of these flavors were marketed with the Elite and Apex products, Altria's "pod" e-cigarettes.

98. Altria's push to gain the youth market gained the attention of the FDA. On September 12, 2018, the FDA sent a warning letter to Altria, requesting that Altria respond with

26¹⁵⁴ Altria Group, Inc., Current Report (Form 8-K), Ex. 99.2 (Feb. 21, 2018) ([remarks by Barrington and other members of Altria's senior management team](#)).

1 a “detailed plan” to address and mitigate the widespread use of its e-cigarette products by
 2 minors.¹⁵⁵ Due to the “epidemic rate of increase in youth use” of e-cigarettes, the FDA had
 3 recently conducted an “enforcement blitz” of retailers nationwide and confirmed that Altria’s
 4 MarkTen products were being sold to minors. The FDA did not mince words, telling Altria that
 5 “[t]his is unacceptable, both legally and as a matter of public health.” The FDA warned Altria
 6 that it has a responsibility to ensure minors are not getting access to its products and that it was
 7 “crucial” that manufacturers like Altria take steps to prevent youth from using its products. First
 8 and foremost, the FDA asked Altria to “take prompt action to address the rate of youth use of
 9 MarkTen products.” The FDA suggested that Altria could revise its current marketing practices,
 10 eliminate online sales, and remove flavored products from the market. The FDA’s expectation
 11 and motivation was clear: “steps must be taken to protect the nation’s young people.”
 12

13 99. On October 25, 2018, Altria responded to the FDA, claiming to have “serious
 14 concerns” about youth access to e-vapor products.¹⁵⁶ It admitted that the use of e-cigarettes by
 15 youth had risen to “epidemic levels.” In response, Altria agreed to remove its pod-based e-
 16 cigarettes from the market and stop selling any flavored traditional e-cigarettes other than
 17 tobacco, menthol, and mint. It acknowledged that “[b]ased on publicly-available information
 18 from FDA and others, we believe pod-based products significantly contribute to the rise in youth
 19 use of e-vapor products. We don’t believe our products are the issue, but we don’t want to risk
 20 contributing to the problem.” Altria’s letter went on to disclaim a number of practices that it
 21 associated with marketing to youth—strategies that were key components of JUUL’s marketing
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 25 ¹⁵⁵ Scott Gottlieb, *Letter to Altria Client Services*, U.S. Food & Drug Admin. (Sept. 12, 2018),
<https://www.fda.gov/media/119666/download>.

26 ¹⁵⁶ Howard A. Willard, *Letter to Scott Gottlieb, Commissioner*, Altria (Oct. 25, 2018),
<http://www.altria.com/About-Altria/Federal-Regulation-of-Tobacco/Regulatory-Filing/FDAFilings/Altria-Response-to-FDA-E-vapor-October-25-2018.pdf>.

1 strategy. Altria specifically identified the use of flavors that go beyond traditional tobacco
 2 flavors, digitally advertising on websites with a large percentage of youth visitors, using social
 3 media to promote the brand, allowing online purchases and promotional sign-ups without age
 4 verification, advertising e-cigarettes on billboards, advertising with models who appear to be
 5 under 25 years old, distributing branded merchandise, and paying celebrities or other third
 6 parties to market or use a particular brand's e-cigarette. Altria also claimed to support "banning
 7 vaping in schools" in order to reduce "social access." Altria ended the letter by committing to
 8 "reverse the current use trend among youth."

100. Less than two months later, Altria changed its tune. On December 20, 2018,
 11 Altria announced that it would be making a \$12.8 billion investment in JUUL, the biggest equity
 12 investment in United States history.¹⁵⁷ The deal gave Altria a 35% stake in JUUL.

14 F. JUUL and Altria Join Forces to Protect JUUL's Market Share

101. By the fall of 2018, JUUL was under intense scrutiny. A group of eleven United
 11 States senators wrote JUUL's CEO, Kevin Burns, a letter in April 2018, declaring that the JUUL
 12 device and JUULpods "are undermining our nation's efforts to reduce tobacco use among youth
 13 and putting an entire new generation of children at risk of nicotine addiction and other health
 14 consequences."¹⁵⁸ Less than a week later, then FDA Commissioner Gottlieb announced a
 15 crackdown on retailers to limit youth access to e-cigarettes and enforcement actions against
 16 JUUL in particular.¹⁵⁹ At the same time, the FDA sent JUUL a request for documents relating to
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 24 ¹⁵⁷ Cromwell Schubarth, *Vaping Unicorn Juul Opens Lab in Mountain View Amid Furor in S.F.*, Silicon Valley
 25 Bus. J. (Feb. 5, 2019), <https://www.bizjournals.com/sanjose/news/2019/02/05/juul-opens-lab-in-mountain-view.html>.

26 ¹⁵⁸ Richard Durbin et al., *Letter from 11 U.S. Senators, to Kevin Burns, CEO of JUUL Labs, Inc.*, U.S. Senate (Apr.
 18, 2018), <https://www.durbin.senate.gov/imo/media/doc/JUUL%20Letter%20-%20SIGNED.pdf>.

¹⁵⁹ Scott Gottlieb, *Statement from FDA Commissioner Scott Gottlieb, M.D., on new enforcement actions and a Youth Tobacco Prevention Plan to stop youth use of, and access to, JUUL and other e-cigarettes*, U.S. Food &

1 marketing, product design, and public health impact.¹⁶⁰ In July 2018, Massachusetts Attorney
 2 General Maura Healey announced an investigation into JUUL regarding marketing and sale to
 3 minors.¹⁶¹ In September 2018, FDA Commissioner Gottlieb called youth vaping an “epidemic”
 4 and sent letters to JUUL, Altria, and other e-cigarette manufacturers demanding a plan to reduce
 5 youth use.¹⁶² Then, in October 2018, as alleged above, the FDA raided JUUL’s headquarters and
 6 seized more than a thousand documents relating to JUUL’s sales and marketing practices.¹⁶³

8 102. On November 13, 2018, JUUL responded with an “Action Plan,” declaring its
 9 intent to stop selling certain flavors in brick-and-mortar stores, restrict purchases of those flavors
 10 on the JUUL website to adults age 21 and over, and shut down its social media accounts.¹⁶⁴

11 103. As the pressure on JUUL intensified, Altria stepped in to assist. Despite the clear
 12 criticism of JUUL’s conduct in its October 25th letter to the FDA, Altria announced its \$12.8
 13 billion investment in JUUL on December 20, 2018.¹⁶⁵ Altria characterized its investment as one
 14 intended to “accelerate harm reduction and drive growth.”¹⁶⁶ In an investor presentation in 2019,

18 Drug Admin. (Apr. 23, 2018), https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-enforcement-actions-and-youth-tobacco-prevention?utm_campaign=04242018_Statement_Youth%20Tobacco%20Prevention&utm_medium=email&utm_source=Eloqua.

20 ¹⁶⁰ *Id.*

21 ¹⁶¹ *AG Healey Announces Investigation into JUUL, Other Online E-Cigarette Retailers Over Marketing and Sale to Minors*, Mass.gov (July 24, 2018), <https://www.mass.gov/news/ag-healey-announces-investigation-into-juul-other-online-e-cigarette-retailers-over-marketing>.

22 ¹⁶² *Letters to Manufacturers Regarding Plans to Address Youth Access and Use*, U.S. Food & Drug Admin. (Sept. 12, 2018), <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/ctp-letters-industry#youth-access>.

24 ¹⁶³ McGinley, *supra* note 23.

25 ¹⁶⁴ *Juul Labs Action Plan*, Juul Labs (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/>.

26 ¹⁶⁵ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive Growth (“Altria Minority Investment”)*, BusinessWire (Dec. 20, 2018), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

¹⁶⁶ *Id.*

1 Altria described JUUL as having a “unique and compelling product” and included the following
 2 graphic:¹⁶⁷



104. But as the president of the Campaign for Tobacco-Free Kids observed upon
 12 announcement of the deal, “Altria has no interest in seriously reducing the number of people who
 13 smoke cigarettes.”¹⁶⁸

15 105. Altria would not have made such an investment if it did not intend to grow
 16 JUUL’s already enormous market even more. In fact, Altria said as much when announcing its
 17 investment, explaining that its investment in JUUL “enhances future growth prospects” and
 18 committing to applying “its logistics and distribution experience to help JUUL expand its reach
 19 and efficiency.”¹⁶⁹ Since the deal was inked in December 2018, Altria’s actions have clearly
 20 helped JUUL maintain, if not expand, its market share—a market share that, based on Altria’s
 21 own October 25, 2018 letter to the FDA, it believes was gained by employing marketing and
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 25 ¹⁶⁷ Howard Willard, *2019 CAGNY Investor Presentation*, Altria (2019),
 http://investor.altria.com/Cache/1500117496.PDF?O=PDF&T=&Y=&D=&FID=1500117496&iid=4087349.

26 ¹⁶⁸ Sheila Kaplan & Matt Richtel, *Juul Closes Deal with Tobacco Giant Altria*, N.Y. Times (Dec. 20, 2018),
<https://www.nytimes.com/2018/12/20/health/juul-reaches-deal-with-tobacco-giant-altria.html>.

¹⁶⁹ *Altria Minority Investment*, *supra* note 171.

1 advertising practices that contributed to youth vaping. Altria's Second Quarter 2019 Earnings
 2 Call reported that JUUL continued to grow in the first half of 2019, from a 33% category share
 3 in 2018 to 48% by the second quarter 2019. JUUL's expected revenue for 2019 is \$3.4 billion,
 4 nearly triple what it was in 2018.¹⁷⁰

5 106. From JUUL's beginnings, Altria had "followed Juul's journey rather closely."¹⁷¹
 6 Altria Chairman and CEO Howard Willard said that, for years, his company "watched Juul
 7 carefully to see if it had staying power."¹⁷² Altria decided it did. As Willard explained: "During
 8 2018, we concluded that JUUL had not only become the retail share leader in the U.S. e-vapor
 9 category, but that no other brand was close to it in share or future growth potential."¹⁷³ This was
 10 enough for Altria, one of the world's largest producers and marketers of tobacco products, to call
 11 JUUL's alleged smoking cessation device a "terrific product" and take a 35% stake in JUUL
 12 with its \$12.8 billion investment.¹⁷⁴ With this investment, Altria now owns both the number one
 13 youth initiation cigarette in the United States (the Marlboro cigarette) and the number one youth
 14 initiation e-cigarette in the United States, JUUL.

15 107. Notwithstanding Altria's statements to the FDA just two months previously about
 16 its concerns that JUUL was marketing and advertising its products in a way that contributed to
 17 the youth vaping epidemic, Willard stated that the deal would allow Altria to "work[] with JUUL
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 23¹⁷⁰ Olivia Zaleski & Ellen Huet, *Juul Expects Skyrocketing Sales of \$3.4 Billion, Despite Flavored Vape*
 24 *Restrictions*, Bloomberg (Feb. 22, 2019), <https://www.bloomberg.com/news/articles/2019-02-22/juul-expects-skyrocketing-sales-of-3-4-billion-despite-flavored-vape-ban>.

25¹⁷¹ Altria Group, Inc., Current Report (Form 8-K) at 4, Ex. 99.1 (Feb. 20, 2019),
<https://www.sec.gov/Archives/edgar/data/764180/000076418019000018/exhibit991-2019cagnyremarks.htm>.

26¹⁷² *Id.* at 4.

¹⁷³ *Id.* at 4.

¹⁷⁴ Angelica LaVito, *E-Cigarette Sales Are Booming Thanks to Juul*, CNBC (Aug. 21, 2018),
<https://www.cnbc.com/2018/08/21/e-cigarette-sales-are-booming-thanks-to-juul.html>.

1 to accelerate its mission.”¹⁷⁵ Altria committed to applying “its logistics and distribution
 2 experience to help JUUL expand its reach and efficiency” and offering JUUL the support of
 3 “Altria’s sales organization, which covers approximately 230,000 retail locations.” It also gave
 4 JUUL access to its “premier” retail shelf space while allowing it to continue to sell its flavored
 5 products online and provided JUUL with access to the databases of all of Altria’s companies.
 6 According to Willard, Altria was “excited to support JUUL’s highly-talented team and offer
 7 [Altria’s] best-in-class services to build on their tremendous success.” Altria admitted that
 8 minors were using JUUL products and that “underage use of e-cigarette product is a problem.”
 9 Nevertheless, that it believed its investment in JUUL “strengthens its financial profile and
 10 enhances future growth prospects.”

12 108. Altria’s decision to prioritize profits over the dangers of youth vaping did not go
 13 unnoticed. On February 6, 2019, former FDA Commissioner Scott Gottlieb, sent Altria another
 14 letter “regarding representations” made by Altria acknowledging that it “has an obligation to take
 15 action to help address the mounting epidemic of youth addiction to tobacco products.”¹⁷⁶
 16 Commissioner Gottlieb told Altria that its recent purchase of a 35% ownership of JUUL
 17 “contradict[s] the commitments you made to the FDA.” The FDA demanded Altria be prepared
 18 to explain itself regarding its “plans to stop marketing e-cigarettes and to address the crisis of
 19 youth use of e-cigarettes.” Commissioner Gottlieb told Altria that “deeply concerning data”
 20 shows that “youth use of JUUL represents a significant proportion of overall use of e-cigarette
 21 products by children” and despite any steps the companies had taken to address the issue he
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 26¹⁷⁵ *Altria Minority Investment*, *supra* note 171.

¹⁷⁶ Scott Gottlieb, *Letter to Howard Willard*, U.S. Food & Drug Admin. (Feb. 6, 2019),
<https://www.fda.gov/media/122589/download>.

1 "ha[d] no reason to believe these youth patterns of use are abating in the near term, and they
 2 certainly do not appear to be reversing."

3 109. The companies met with Gottlieb in March 2019 in a meeting the Commissioner
 4 described as "difficult."¹⁷⁷ Gottlieb "did not come away with any evidence that public health
 5 concerns drove Altria's decision to invest in JUUL, and instead sa[id] it looks like a business
 6 decision." Just a few weeks later, Gottlieb resigned his position.

7 110. As mentioned above, Altria's investment in JUUL is not only a financial
 8 contribution. Altria is working to actively help run JUUL's operations and expand JUUL's sales.
 9 Altria's investment brings legal and regulatory benefits to JUUL, by helping with patent
 10 infringement battles and consumer health claims and helping to navigate the regulatory waters
 11 and FDA pressure. In fact, Joe Murillo, who headed regulatory affairs for Altria, is now JUUL's
 12 chief regulatory officer.¹⁷⁸ A 24-year career Altria executive, Murillo previously ran Altria's e-
 13 cigarette business, Nu Mark, "before Altria pulled its e-cigarettes off the market as part of its
 14 deal with J[UUL]."¹⁷⁹

15 111. Altria also brings lobbying muscle. Altria "has a potent lobbying network in
 16 Washington and around the country."¹⁸⁰ While an Altria spokesman has denied that there was
 17 any contractual services agreement for lobbying between JUUL and Altria, he admitted that he
 18

21
 22 ¹⁷⁷ Kate Rooney & Angelica LaVito, *Altria shares fall after FDA's Gottlieb describes 'difficult' meeting on Juul*,
 23 CNBC (Mar. 19, 2019), <https://www.cnbc.com/2019/03/19/altria-shares-fall-after-fdas-gottlieb-describes-difficult-meeting-on-juul.html>.

24 ¹⁷⁸ Jennifer Maloney, *Juul Hires Another Top Altria Executive*, Wall St. J. (Oct. 1, 2019),
 25 <https://web.archive.org/web/20191009170129/https://www.wsj.com/articles/juul-hires-another-top-altria-executive-11569971306> (last visited Nov. 7, 2019).

26 ¹⁷⁹ *Id.*

180 Shelia Kaplan, *In Washington, Juul Vows to Curb Youth Vaping. Its Lobbying in States Runs Counter to That Pledge.*, N.Y. Times (Apr. 28, 2019), <https://www.nytimes.com/2019/04/28/health/juul-lobbying-states-ecigarettes.html>.

1 did not know what informal advice and conversations Altria has had with JUUL about lobbying
 2 and efforts. Vince Willmore, a spokesman for the Campaign for Tobacco-Free Kids, which has
 3 been involved in many state lobbying battles, said, “It’s hard to say where Altria ends and Juul
 4 begins.”¹⁸¹ Since JUUL and Altria joined forces, JUUL’s spending on lobbying has risen
 5 significantly. JUUL spent \$1.95 million on lobbying in the first two quarters of 2019, compared
 6 to \$1.64 million in all of 2018.¹⁸²

8 112. In addition, Altria’s arrangement with JUUL gives JUUL greater access to retail.
 9 JUUL has been in 90,000 US retail outlets, while Altria reaches 230,000 US outlets. Altria
 10 brings its logistic and distribution experience. Importantly, Altria gives JUUL access to shelf
 11 space—and not just shelf space, but space near Altria products and retail displays. The
 12 arrangement allows JUUL’s tobacco and menthol-based products to receive prominent
 13 placement alongside a top-rated brand of combustible cigarettes.

15 113. Altria is closely intertwined with JUUL. Not only does Altria’s investment also
 16 allow it to appoint a third of JUUL’s board, but last month, JUUL’s CEO resigned to be replaced
 17 by another career Altria executive, K.C. Crosthwaite. Crosthwaite had most recently served as
 18 the vice president and chief growth officer of Altria Client Services LLC, overseeing the
 19 company’s work, including digital marketing, packaging design & innovation, product
 20 development, and safety, health, and environmental affairs. Crosthwaite is a career Altria
 21 executive who knows Big Tobacco’s playbook all too well, having previously serving as the
 22 president and CEO of Phillip Morris USA, the vice president and general manager at Marlboro,
 23 and the vice president of strategy and business development of at Altria Client Services LLC.

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 26¹⁸¹ *Id.*

¹⁸² Alex Ganitano, *Embattled Juul seeks allies in Washington*, The Hill (Aug. 7, 2019),
<https://thehill.com/business-a-lobbying/business-a-lobbying/456449-embattled-juul-seeks-allies-in-washington>.

1 114. This arrangement was profitable for both companies. JUUL employees received
 2 \$2 billion in bonuses, which, split among the Company's 1,500 employees, was approximately
 3 \$1.3 million per employee,¹⁸³ and Altria received millions of teen customers.

4 115. JUUL claims its mission is to "improve the lives of the world's one billion adult
 5 smokers by eliminating cigarettes" and its advertising now encourages "making the switch."¹⁸⁴
 6

7 116. In March 2019, JUUL's CEO Ken Burns wrote an op-ed piece declaring his
 8 agreement with HHS Secretary Azar and FDA Commissioner Gottlieb "that companies such as
 9 ours must step up with meaningful measures to limit access and appeal of vapor products to
 10 young people. And that's exactly what we've done, and we will do more to combat teen use in
 11 order to save the harm-reduction opportunity for the 34 million adult smokers in the United
 12 States."¹⁸⁵
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14 117. In September 2019, JUUL spokesperson Ted Kwong said the company agreed
 15 with the need for "aggressive category-wide action on vapor products," adding that it had taken
 16 "the most aggressive actions of anyone in the industry to combat youth usage."¹⁸⁶
 17

18 118. Similarly, Altria's CEO Howard Willard claimed that it invested in JUUL to help
 19 "switching adult smokers" and "reduce harm."¹⁸⁷ But JUUL does not have FDA approval as a
 20 cessation device. This may be because, as one Company engineer said: "We don't think a lot
 21
 22

23 ¹⁸³ Olivia Zaleski, *Juul Employees to Get \$2 Billion Bonus in Altria Deal*, Bloomberg (Dec. 20, 2018),
<https://www.bloomberg.com/news/articles/2018-12-20/juul-employees-said-to-get-2-billion-bonus-in-altria-deal>.

24 ¹⁸⁴ *Our Mission*, JUUL Labs (2019), <https://www.juul.com/mission-values>.

25 ¹⁸⁵ Kevin Burns, *Vape makers must do more to stop kids from using e-cigarettes*, Wash. Post (Mar. 30, 2019),
<https://www.washingtonpost.com/opinions/2019/03/30/vape-makers-must-do-more-stop-kids-using-e-cigarettes/>.

26 ¹⁸⁶ Steve Gorman, *California governor acts to stem 'epidemic' of youth vaping*, Reuters (Sept. 16, 2019),
<https://www.reuters.com/article/us-health-vaping-california/california-governor-acts-to-stem-epidemic-of-youth-vaping-idUSKBN1W12DD>.

187 See *Altria Minority Investment*, *supra* note 171.

about addiction here because we're not trying to design a cessation product at all ... anything about health is not on our mind.”¹⁸⁸

119. JUUL also does not have authority to claim that its product is healthier than cigarettes. On September 9, 2019, the FDA warned JUUL that it has violated federal law by making unauthorized representations that JUUL products are safer than cigarettes.¹⁸⁹

120. Moreover, even if JUUL were to obtain FDA approval as a legitimate smoking cessation device, this has no impact—and certainly does not excuse—the Defendants' conduct that targets youth. Regardless of the potential health benefits to chain smokers from switching to vaping from smoking, there is no benefit to kids from starting to vape.

G. The Cost of JUUL's Success

121. In addition to designing its devices to be particularly attractive to youth, JUUL designed its devices to be highly addictive. Unlike most other e-cigarettes, which use freebase nicotine, JUUL uses patented nicotine salts from which it makes liquid nicotine cartridges, or JUULpods.¹⁹⁰ Each JUULpod is, according to the Company, the equivalent of a pack of cigarettes. Each pod contains an alarming amount of nicotine, with up to 59 mg per ml—an amount that is roughly three times the amount of nicotine that can be sold to consumers in the European Union in a JUULpod. On top of ramping up the amount of nicotine, JUULpods enabled the Company to increase the rate and amount of nicotine delivery to the JUUL user, roughly doubling the concentration and tripling the delivery speed of nicotine of the average e-

¹⁸⁸ Nitasha Tiku, *Startup Behind the Lambo of Vaporizers Just Launched an Intelligent e-Cigarette*, The Verge (Apr. 21, 2015), <https://www.theverge.com/2015/4/21/8458629/pax-labs-e-cigarette-juul>.

¹⁸⁹ Juul Labs, Inc. Warning Letter, U.S. Food & Drug Admin. (Sept. 9, 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

¹⁹⁰ Rachel Becker, *Juul's Nicotine Salts Are Dominating the Market – And Other Companies Want In*, The Verge (Nov. 21, 2018), <https://www.theverge.com/2018/11/21/18105969/juul-vaping-nicotine-salts-electronic-cigarettes-myblu-vuse-markten>.

1 cigarette.¹⁹¹ Eonsmoke has followed this same playbook, advertising “[e]ach flavored cartridge is
 2 the equivalent of up to a pack of traditional cigarettes.”¹⁹² But Eonsmoke’s products claim to
 3 contain even more nicotine than JUULs. For example, EonSmoke sells its 4x Pods in ‘Blue
 4 Raspberry Flavor JUUL Compatible 6.8% Salt Nic Pods.’¹⁹³

5 122. Big Tobacco spent decades manipulating nicotine in order to foster and maintain
 6 addiction in their customers. RJR developed and patented nicotine salt additives, including
 7 nicotine benzoate, to increase nicotine delivery in cigarette smoke. The objective was to provide
 8 an additional “nicotine kick” based on increased nicotine absorption associated with lower pH.
 9 JUUL uses this very same concept for its market-dominating e-cigarettes. The Company’s patent
 10 for its nicotine salts describes a process for combining benzoic acids with nicotine, a formulation
 11 that mimics the nicotine salt additive developed by RJR. JUUL’s use of benzoic acid and
 12 manipulation of pH affect the palatability of nicotine inhalation by reducing the “throat hit” that
 13 users experience when vaping. Indeed, this was the objective behind using nicotine salts (as
 14 compared to “free base nicotine” which has a higher pH). According to Ari Atkins, one of the
 15 inventors of the JUUL device, “[i]n the tobacco plant, there are these organic acids that naturally
 16 occur. And they help stabilize the nicotine in such a way that makes it . . . I’ve got to choose my
 17 words carefully here: Appropriate for inhalation.”¹⁹⁴

21 191 *How Much Nicotine is In Juul?*, Truth Initiative (Feb. 26, 2019), <https://truthinitiative.org/research-resources/emerging-tobacco-products/how-much-nicotine-juul>.

22 192 *Eonsmoke About Us*, eonsmoke.com, <https://web.archive.org/web/20191009033001/https://www.eonsmoke.com/about-us/> (last visited Nov. 7, 2019).

23 193 *Eonsmoke Product*, eonsmoke.com, <https://web.archive.org/web/20191009085755/https://www.eonsmoke.com/product/4x-blue-raspberry-flavor-juul-compatible-6-8-salt-nic-pods/> (last visited Nov. 7, 2019) (“Flavor profile: Your favorite snack and ejuice flavor now in pod form. Both sweet and sour at the same time, makes sour gummy one of the fan favorites. Blue Raspberry 4x pods just hit that sweet spot of flavor.”).

24 194 David Pierce, *This Might Just Be the First Great E-Cig*, Wired.com (Apr. 21, 2015), <https://www.wired.com/2015/04/pax-juul-ecig/>.

1 123. Because smokers are already accustomed to a certain level of harshness and throat
 2 hit, developing a product with low levels of harshness and minimal “throat hit” is only a critical
 3 concern if your goal is to appeal to non-smokers, for example, youth. Minimizing the harshness
 4 of nicotine also allows one to vape more frequently and for longer periods of time and masks the
 5 amount of nicotine being delivered by eliminating the unpleasant throat hit normally associated
 6 with large doses of nicotine. The harshness of free base nicotine makes prolonged vaping
 7 difficult; the use of nicotine salts solves that problem. Put another way, the nicotine salt
 8 technology behind JUULpods makes JUUL “smoke” highly potent yet hardly perceptible.

10 124. Eonsmoke has honed in on this distinction. For example, in a comment on social
 11 media platform Reddit, Eonsmoke advertised that compared to JUUL, “[o]ur throat hit is
 12 smoother, buzz is the same.” Eonsmoke also advertised their new “disposable pod system which
 13 is 1.3ml and 7% salt nic for 8\$ you get the battery plus one large pod that lasts like 2 juul
 14 pods.”¹⁹⁵

16 125. The increased nicotine exposure facilitated by the JUUL device and its tag-along,
 17 Eonsmoke, has serious health consequences. The ease of use and “smoothness” strip away
 18 external inhibitors and enable extreme levels of unfettered use. Using the JUUL’s own
 19 calculations, consuming two JUULpods in a day is the equivalent of consuming two to four
 20 packs of cigarettes a day. In this way, JUUL has not only created a new generation of e-cigarette
 21 smokers, but has also pioneered a new style of smoking—vaping—that is more nicotine-
 22 saturated than ever before.

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¹⁹⁵ Comment on Reddit by user “Eonjuulcompatiblepod” on Oct. 23, 2018 3:40 PM,
https://www.reddit.com/r/juul/comments/9qrxxr/3rd_party_pods/e8bqkbb/?context=3.

1 126. Increased rates and duration of smoking lead to greater overall exposure to
 2 nicotine. Nicotine is a neurotoxin. A highly addictive, psychoactive substance that targets brain
 3 areas involved in emotional and cognitive processing, nicotine poses a particularly potent threat
 4 to the adolescent brain, as it can “derange the normal course of brain maturation and have lasting
 5 consequences for cognitive ability, mental health, and even personality.”¹⁹⁶ Animal researchers
 6 from the Yale University School of Medicine has found that vaping during adolescence can lead
 7 to long-term brain changes, like attention deficit hyperactivity disorder.¹⁹⁷

9 127. Studies also show that exposure to nicotine as a teen—even minimal exposure—
 10 biologically primes the brain for addiction and greatly increases likelihood of dependence on
 11 nicotine as well as other substances later in life.¹⁹⁸ In a study done on mice, even “very brief,
 12 low-dose exposure to nicotine in early adolescence increases the rewarding properties of other
 13 drugs, including alcohol, cocaine, methamphetamine—and these are long-term changes.”¹⁹⁹

15 128. JUUL and Eonsmoke’s use of flavors only amplifies their addictive qualities.
 16 Research done by Nii Addy, associate professor of psychiatry and cellular and molecular
 17 physiology at the Yale School of Medicine, found that “sweet flavors can make the nicotine
 18 more palatable . . . but also act in the brain to increase nicotine taking.”²⁰⁰ This effective is
 19 especially troubling for teenage brains, which are more sensitive than adult brains to rewards.

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 22 ¹⁹⁶ N.A. Goriounova & H.D. Mansvelder, *Short- and Long-Term Consequences of Nicotine Exposure during Adolescence for Prefrontal Cortex Neuronal Network Function*, Cold Spring Harbor Persp. in Med. 2(12) (Dec. 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/>.

23 ¹⁹⁷ Jon Hamilton, *How Vaping Nicotine Can Affect A Teenage Brain*, NPR (Oct. 10, 2019),
<https://www.npr.org/sections/health-shots/2019/10/10/768588170/how-vaping-nicotine-can-affect-a-teenage-brain>.

24 ¹⁹⁸ *Principles of Adolescent Substance Use Disorder: A Research Based Guide*, Nat'l Inst. on Drug Abuse (2014),
<https://www.drugabuse.gov/publications/principles-adolescent-substance-use-disorder-treatment-research-based-guide/introduction>.

25 ¹⁹⁹ Hamilton, *supra* note 204.

26 ²⁰⁰ *Id.*

1 According to University of Pennsylvania psychologist Janet Audrain-McGovern, research shows
 2 that “if the first e-cigarette you used was flavored, then you’re more likely to go on and use an e-
 3 cigarette again.”²⁰¹

4 129. According to congressional testimony from Dr. Jonathan Winickoff, a professor
 5 of pediatrics at Harvard Medical School and the Director of Pediatric Research in the Tobacco
 6 Research and Treatment Center, “[n]icotine addiction can take hold in only a few days,
 7 especially in the developing adolescent brain that is particularly vulnerable to addiction to
 8 nicotine. . . Many of my patients find Juul nearly impossible to stop. Nicotine withdrawal can
 9 cause headaches, insomnia, irritability, anxiety, and depression, and these withdrawal symptoms
 10 are one of the primary reasons a nicotine addiction is difficult to overcome.”²⁰² Moreover, there
 11 is a lack of effective tools to help adolescents overcome nicotine addiction: there is no good data
 12 on how to treat adolescents with e-cigarette dependence; there has not been enough research on
 13 youth tobacco cessation strategies; and most of the pharmacological therapies approved for
 14 adults have been shown to be ineffective or only marginally effective in adolescents.²⁰³

17 130. Research in Massachusetts indicates that daily JUUL and other e-cigarette use is
 18 much more likely to continue than daily cigarette smoking. Out of the surveyed students who
 19 reported ever using cigarettes, only 17% indicated that they remained daily smokers. Out of the
 20 surveyed students who reported ever using e-cigarettes daily, 58% remained daily users. This
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 24 ²⁰¹ *Id.*
 25 ²⁰² Jonathan Winickoff, *Testimony of Jonathan Winickoff before the U.S. House of Representatives Committee on*
 Oversight and Reform Subcommittee on Economic and Consumer Policy (“Winickoff Testimony”) at 2, U.S.
 House Committee on Oversight & Reform (July 24, 2019),
 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AAP%20Testimony.pdf>.

26 ²⁰³ *Id.* at 2.

1 data demonstrates both that e-cigarette use in teens is very persistent, a result consistent with the
2 addictiveness of JUUL and the difficulty teens have in trying to quit.²⁰⁴

3 131. E-cigarette use also puts adolescents at increased risk for cigarette smoking.
4 Compared to adolescents who do not use e-cigarettes, those who do are 3.5 times more likely to
5 begin smoking cigarettes.

6 132. The dangerous and destructive nature of nicotine is no recent discovery. As a key
7 ingredient in tobacco products, the drug and its deleterious effects have been the subject of
8 scientific research and public health warnings for decades. Nicotine causes cardiovascular,
9 reproductive, and immunosuppressive problems with devastating effects. Part of the reason the
10 national decline in cigarette use in recent years was such a victory for public health was because
11 there was a corresponding decline in teen exposure to nicotine. From 2000 to 2017, the smoking
12 rate among high school students fell by 73%.²⁰⁵

13 133. That trend has completely reversed. In 2018, more than one in four high school
14 students in the United States reported using a tobacco product in the past thirty days, a dramatic
15 increase from just one year before.²⁰⁶ But there was no increase in the use of cigarettes, cigars, or
16 hookahs during that same time period.²⁰⁷ There was only increased use in a single tobacco
17 product: e-cigarettes. While use of all other tobacco products continued to decrease as it had
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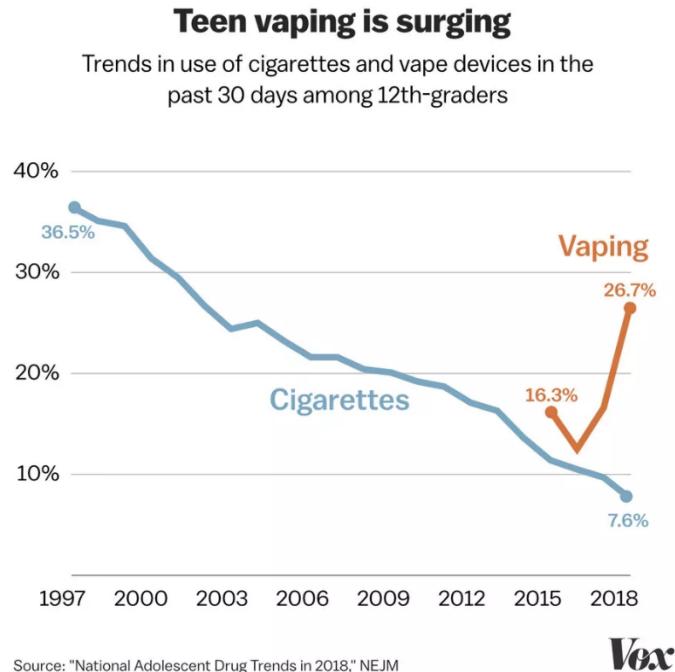
²⁰⁴ *Id.* at 2.

²⁰⁵ Matthew L. Myers, *Press Release: On 20th Anniversary of State Tobacco Settlement (the MSA), It's Time for Bold Action to Finish the Fight Against Tobacco*, Campaign for Tobacco-Free Kids (Nov. 26, 2018), https://www.tobaccofreekids.org/press-releases/2018_11_26_msa20.

²⁰⁶ *Progress Erased: Youth Tobacco Use Increased During 2017-2018*, Ctrs. for Disease Control & Prevention (Feb. 11, 2019), <https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html>.

²⁰⁷ *Tobacco Use By Youth Is Rising: E-Cigarettes are the Main Reason*, Ctrs. for Disease Control & Prevention (Feb. 2019), <https://www.cdc.gov/vitalsigns/youth-tobacco-use/index.html>.

1 been for decades, e-cigarette use increased 78% in just one year.²⁰⁸ This drastic reversal caused
 2 the CDC to describe youth vaping an “epidemic.”²⁰⁹



134. The teen vaping epidemic of which JUUL is the architect and Eonsmoke has
 13 furthered has and will continue to have significant costs, both for individual users and for
 14 society. Nicotine addiction alone has significant health care costs, and these costs are
 15 exacerbated when adolescents are involved. Adolescent nicotine addiction leads to memory and
 16 attention problems, and increase chances of addiction later in life, all of which will continue to
 17 have long-lasting impacts on society.

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25 ²⁰⁸ Scott Gottlieb, *Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth by preventing access to flavored tobacco products and banning menthol in cigarettes*, U.S. Food & Drug Admin. (Nov. 15, 2018), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access>.

26 ²⁰⁹ Adams, *supra* note 2.

1 135. Science is also beginning to show that e-cigarettes have the potential to cause
 2 even more, distinct health risks and costs. The very same liquids that enable e-cigarettes to
 3 deliver nicotine with such potency are proving to be increasingly dangerous. When heated, the
 4 vape liquid turns into aerosol, which may contain, in addition to nicotine, ultrafine toxic particles
 5 such as lead, additional chemicals, and volatile organic compounds.²¹⁰ These chemicals have the
 6 potential to be deadly. Vaping is now linked to conditions like chronic obstructive pulmonary
 7 disease and seizures, and there were 193 possible cases of severe lung illness associated with e-
 8 cigarette product use in 22 states in less than two months in the summer of 2019 alone.²¹¹ Public
 9 health officials reported the first known death from a vaping-related illness on August 23,
 10 2019.²¹² On September 11, 2019, a teenager became the first person in Washington State to be
 11 diagnosed with a severe lung disease associated with vaping.²¹³ By October 10, 2019, lung
 12 illness tied to vaping had killed 26 people, and there were over 1,300 possible cases of serious
 13 illness reported from 49 states.²¹⁴ Only Alaska has not yet seen a case. 16% of these patients have
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20 ²¹⁰ Lena H. Sun, *He went from hiking enthusiast to ‘on death’s door’ within days. Doctors blamed vaping*, Wash.
 21 Post (Aug. 24, 2019), https://www.washingtonpost.com/health/one-mans-near-death-experience-with-vaping-related-lung-failure/2019/08/24/ca8ce42c-c5b4-11e9-9986-1fb3e4397be4_story.html?arc404=true.

22 ²¹¹ *CDC, FDA, States Continue to Investigate Severe Pulmonary Disease Among People Who Use E-cigarettes*, Ctrs. for Disease Control & Prevention (Aug. 21, 2019), <https://www.cdc.gov/media/releases/2019/s0821-cdc-fda-states-e-cigarettes.html>.

23 ²¹² Matt Richtel & Sheila Kaplan, *First Death in a Spate of Vaping Sickneses Reported by Health Officials*, N.Y. Times (Aug. 23, 2019), <https://www.nytimes.com/2019/08/23/health/vaping-death-cdc.html>.

24 ²¹³ Nicole Brodeur & Ryan Blethen, *King County teen is first in state diagnosed with severe lung disease related to vaping*, Seattle Times (Sept. 11, 2019), <https://www.seattletimes.com/seattle-news/health/king-county-teen-is-first-in-state-diagnosed-with-severe-lung-disease-related-to-vaping/>.

25 ²¹⁴ Nicole Brodeur & Ryan Blethen, *King County teen is first in state diagnosed with severe lung disease related to vaping*, Seattle Times (Sept. 11, 2019), <https://www.seattletimes.com/seattle-news/health/king-county-teen-is-first-in-state-diagnosed-with-severe-lung-disease-related-to-vaping/>.

been under the age of 18.²¹⁵ In October 2019, a 17-year-old boy from the Bronx, New York became the first child to die from vaping-related respiratory illness.²¹⁶

136. Many teenagers are simply unaware of these risks, an ignorance that JUUL preys on. According to Dr. Winickoff, many of his patients believe JUULing is harmless:

Counseling teens and preteens on e-cigarette use is challenging. Many of my patients have wildly incorrect beliefs about e-cigarettes. They know that cigarettes are dangerous, but assume that Juul—since it's ubiquitous, comes in child-friendly flavors, and is marketed as a healthier alternative to smoking—must be harmless. I have to explain to kids that e-cigarettes do not have the same positive health benefits as the fruits whose flavor they copy. Even the term vapor calls to mind harmless water vapor. There is no water in these products.

Winickoff Testimony at 1.

H. JUUL's Remedial Measures

137. In the face of increasing public scrutiny and pressure, JUUL has taken action to curb underage use of its products, but its efforts have been ineffective at best and aggravating at worse. After media and researchers brought JUUL’s advertising tactics front and center, it launched a new ad campaign focusing on former smokers and deleted social media accounts. But, JUUL designed its social media campaign to subsist off of user-made content, which remains unaffected by the absence of a JUUL-run account. In fact, as noted above, posts relating to JUUL increased after it stopped its own social media advertising.

138. Lisa Davidson, Prevention and Intervention Manager at Seattle Public Schools, has recognized this problem, telling KUOW last year that pulling the advertising from social media likely won't make a huge difference because JUUL already has so much market share, and

²¹⁵ Denise Grady, *Vaping Illnesses Top 1,000, C.D.C.*, N.Y. Times (Oct. 3, 2019), <https://www.nytimes.com/2019/10/03/health/vaping-illnesses-cdc.html>.

²¹⁶ Ed Shanahan & Azi Paybarah, *Bronx Teenager's Death Is the Youngest Vaping Fatality in U.S.*, N.Y. Times (Oct. 8, 2019), <https://www.nytimes.com/2019/10/08/nyregion/vaping-death.html>.

1 young people are ready to fill that gap. “Peer promotion is a huge thing,” said Davidson, “Young
 2 people taking videos of themselves vaping, or photos of themselves vaping and posting it.”²¹⁷

3 139. In November 2018, JUUL announced changes to the sale and marketing of its
 4 flavored pods, but these changes are similarly unlikely to be effective in curbing the crisis. JUUL
 5 slightly modified its flavor names (i.e., “Cool Mint” is now “Mint,” “Crème Brulee” is now
 6 “Creme”), and it limited the flavors carried by retail stores to tobacco, menthol, and mint, while
 7 continuing to offer the full range of flavors (including the popular Mango) online—a market
 8 which teens are particularly adept at navigating. As Dr. Winickoff testified before Congress:

9 [it is] completely false to suggest that mint is not an attractive flavor to children.
 10 From candy canes to toothpaste, children are introduced to mint flavor from a
 11 young age. Not only do children enjoy mint, but it has special properties that
 12 make it an especially dangerous flavor for tobacco. Menthol’s anesthetic
 13 properties cool the throat, mask the harshness of nicotine, and make it easier for
 14 children to start using and continue using tobacco products. The impact of mint
 15 and menthol flavors on increasing youth tobacco addiction is well documented.

16 Winickoff Testimony at 3. Davidson agreed. In 2018, she told KUOW that “[t]he device is still
 17 very attractive to youth, menthol and mint are still available in stores, and they get it from their
 friends and they can buy it online.”²¹⁸

18 140. As Davidson mentioned, restricting other flavors to online sales is of limited
 19 effectiveness. According to Dr. Winickoff, 80% of children get e-cigarettes from social sources,
 20 such as older friends, meaning that if the products are available for sale somewhere, children will
 21 get them.²¹⁹

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²¹⁷ Radil, *supra* note 10.

218 Radil, *supra* note 10.

219 *Id.*

1 141. On October 17, 2019, JUUL announced that it would suspend the sale of certain
 2 flavors even online.²²⁰ However, this is likely to have minimal impact given that JUUL will
 3 continue to sell the mint and menthol flavors. Recent research shows that 60% of high school
 4 JUUL users prefer mint and menthol.²²¹ Robin Koval, CEO and president of Truth Initiative,
 5 echoed Dr. Winickoff's testimony, stating that that mint and menthol are among the most
 6 popular flavors for youth and that "We also know, as does the tobacco industry, that menthol has
 7 been and continues to be the starter flavor of choice for young cigarette users."²²² As former
 8 New York City Mayor Mike Bloomberg put it, "JUUL's decision to keep mint- and menthol-
 9 flavored e-cigarettes on the shelves is a page right out of the tobacco industry's playbook."²²³
 10 Almost a month later, JUUL announced that it would stop selling mint, but will continue to sell
 11 menthol flavored products.²²⁴

12 142. In addition, on November 4, 2019, VICE Magazine reported that when it visited
 13 more than 20 stores in New York City, all but two of the stores selling JUUL products had at
 14 least one of the banned flavors available in stores, including the popular mango flavor.²²⁵ Some
 15 of these stores were displaying these products even after JUUL announced that it would not
 16 suspend the sale of certain flavors. According to one bodega owner, the last time a JUUL
 17 representative came into his store, flavored pods like mango were on display, but the
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21 220 Allison Aubrey, *Juul Suspends Sales of Flavored Vapes and Signs Settlement to Stop Marketing to Youth*, NPR
 22 (Oct. 17, 2019), <https://www.npr.org/sections/health-shots/2019/10/17/771098368/juul-suspends-sales-of-flavored-vapes-and-signs-settlement-to-stop-marketing-to->.

23 221 Lindsey Tanner, *US teen vaping numbers climb, fueled by Juul & mint flavor*, Associated Press (Nov. 5, 2019),
 24 <https://apnews.com/8151770f69fd43c4b132854a335d0ef1>.

222 *Id.*

223 *Id.*

24 224 Associated Press, *Juul Halts Sales of Mint, Its Top-Selling e-Cigarette Flavor*, N.Y. Times (Nov. 7, 2019),
 25 <https://www.nytimes.com/aponline/2019/11/07/health/bc-us-med-juul-flavor.html>.

26 225 Hannah Smothers, *JUUL's 'Banned' Flavors Are Still Absolutely Available in New York City*, VICE (Nov. 4, 2019), https://www.vice.com/en_us/article/xwepnj/juul-pod-banned-flavors-still-available-in-new-york-city.

1 representative said nothing about them.²²⁶ Photographs taken for this article show both mango
2 flavored JUUL products and flavored Eonsmoke products are still being sold side by side as
3 recently as mid-October 2019.

4 **I. JUUL and Schools**

5 143. In addition to severe health consequences, widespread “JUULing” has placed
6 severe burdens on society and schools in particular. It is not an overstatement to say that JUUL
7 has changed the educational experience of students across the nation. As one vape shop manager
8 told KOMO News, “It’s the new high school thing. Everyone’s got the JUUL.”²²⁷

9 144. According to a student at Eastlake High School in Washington, JUUL is “[v]ery
10 popular. Every grade at my school. I’m a senior and all the freshmen, sophomore, junior, we all
11 do ‘em.”²²⁸ Students at Ballard High School, part of Seattle Public Schools, agree: “juuling” is
12 popular and many high school students use JUUL.²²⁹ “Everyone I know who has had access to
13 nicotine has done it through a JUUL,” said Ballard High School student Olivia Budick.²³⁰ Budick
14 added that her friends use JUUL even though they would not smoke cigarettes.²³¹

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23 ²²⁶ *Id.*

24 ²²⁷ *Juuling at School*, supra note 87.

25 ²²⁸ *Id.*

26 ²²⁹ Alison Grande, ‘Juuling’: Vaping device that looks like USB drive popular with teens, Kiro 7 News (Dec. 8,
2017), <https://www.kiro7.com/news/local/juuling-vaping-device-that-looks-like-usb-drive-popular-with-teens/660965605>.

²³⁰ *Id.*

²³¹ *Id.*

1 145. JUUL use has completely changed school bathrooms—now known as “the Juul
 2 room.”²³² As one high school student explained, “it’s just a cloud.”²³³ The ubiquity of JUUL use
 3 in high school bathrooms has generated numerous online spoofs about “the juul room.”



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146. As Ballard High School student Wylie Soltes said, “You can pull it out, you can
 have it anywhere. To smoke a cigarette you have to hit the bus stop. You want a Juul you hit the
 bathroom, it’s easy.”²³⁵ Soltes added that JUUL “market[s] it as an alternative to cigarettes but
 really it’s a bunch of kids who have never picked up a pack and they’re starting their nicotine

22 232 Moriah Balingit, *In the ‘Juul room’: E-cigarettes spawn a form of teen addiction that worries doctors, parents*
 23 *and schools*, Wash. Post (July 26, 2019), https://www.washingtonpost.com/local/education/helpless-to-the-draw-of-nicotine-doctors-parents-and-schools-grapple-with-teens-addicted-to-e-cigarettes/2019/07/25/e1e8ac9c-830a-11e9-933d-7501070ee669_story.html.

24 233 Greta Jochem, *Juuling in School: e-Cigarette Use Prevalent Among Local Youth*, Daily Hampshire Gazette
 25 (Nov. 13, 2018), <https://www.gazettenet.com/Juuling-in-Schools-21439655>.

26 234 *Juul Hashtag Meme*, Stanford U. Res. into the Impact of Tobacco Advert. (2018),
http://tobacco.stanford.edu/tobacco_main/images_pods.php?token2=fm_pods_st681.php&token1=fm_pods_img_37610.php&theme_file=fm_pods_mt068.php&theme_name=JUUL&subtheme_name=%23juul.

235 Grande, *supra* note 236.

1 addiction there.”²³⁶ Students at Roosevelt High School, also part of Seattle Public Schools, stated
 2 that students had “set off the fire alarm four times last year from vaping in the bathrooms [at
 3 school],” adding that it is commonplace to see students vaping in school bathrooms or in the
 4 parking lot.²³⁷

5 147. Kids have also coined the term “nic sick”—which, as one high school student
 6 explained to CBS News, “kinda seems like a really bad flu, like, just out of nowhere. Your face
 7 goes pale, you start throwing up and stuff, and you just feel horrible.”

8 148. Such rampant JUUL use and use of copycat products like Eonsmoke has
 9 effectively added another category to teachers’ and school administrators’ job descriptions; many
 10 now receive special training to respond to the various problems that JUUL use presents, both in
 11 and out of the classroom. A national survey of middle schools and high schools found that 43.3%
 12 of schools have had to implement not only an e-cigarette policy but a JUUL-specific policy.
 13 Participants in the survey reported multiple barriers to enforcing these policies, including the
 14 discreet appearance of the product, difficulty pinpointing the vapor or scent, and the addictive
 15 nature of the product.

16 149. Across the United States, schools have had to divert resources and administrators
 17 have had to go to extreme lengths to respond to the ever-growing number of students using
 18 JUULs on school grounds. According to the Truth Initiative, more than 40 percent of all teachers
 19 and administrators reported that their school uses camera surveillance near the school’s restroom,
 20 almost half (46 percent) reported camera surveillance elsewhere in the school, and 23 percent
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25 236 *Id.*

26 237 Manisha Jha, ‘*You need to stop vaping right now*’: Students and faculty react to Washington vape ban, The Daily, U. of Wash. (Sept. 30, 2019), http://www.dailuw.com/news/article_960d8692-e324-11e9-870c-9f9d571115d6.html.

1 reported using assigned teachers for restroom surveillance. Some schools have responded by
 2 removing bathroom doors or even shutting bathrooms down, and schools have banned flash
 3 drives to avoid any confusion between flash drives and JUULs. Schools have also paid thousands
 4 of dollars to install special monitors to detect vaping, which they say is a small price to pay
 5 compared to the plumbing repairs otherwise spent as a result of students flushing vaping
 6 paraphernalia down toilets. Other school districts have sought state grant money to create new
 7 positions for tobacco prevention supervisors, who get phone alerts when vape smoke is detected
 8 in bathrooms.

10 150. Many schools have shifted their disciplinary policies in order to effectively
 11 address the vaping and JUUL epidemic. Rather than immediately suspending students for a first
 12 offense, school districts have created anti-vaping curricula which students are required to follow
 13 in sessions held outside of normal school hours, including on Saturdays. Teachers prepare
 14 lessons and study materials for these sessions with information on the marketing and health
 15 dangers of vaping —extra work which requires teachers to work atypical hours early in the
 16 mornings and on weekends. Some schools will increase their drug testing budget to include
 17 random nicotine tests for students before they join extracurricular activities. Under this drug-
 18 testing protocol, first offenders will undergo drug and alcohol educational programming; second
 19 and third offenders will be forced to sit out from extracurriculars and attend substance abuse
 20 counseling.

23 151. JUUL actively sought to enter school campuses. The Subcommittee on Economic
 24 and Consumer Policy (“Subcommittee”) conducted a months-long investigation of JUUL,
 25 including reviewing tens of thousands of internal documents, and concluded that JUUL
 26 “deliberately targeted children in order to become the nation’s largest seller of e-cigarettes.” The

1 Subcommittee found that “(1) Juul deployed a sophisticated program to enter schools and convey
 2 its messaging directly to teenage children; (2) Juul also targeted teenagers and children, as young
 3 as eight years-old, in summer camps and public out-of-school programs; and (3) Juul recruited
 4 thousands of online “influencers” to market to teens.”

5 152. According to the Subcommittee, JUUL was willing to pay schools and
 6 organizations hundreds of thousands of dollars to have more direct access to kids. Such attempts
 7 included paying a Baltimore charter school organization \$134,000 to start a summer camp to
 8 teach kids healthy lifestyles, for which JUUL itself would provide the curriculum; offering
 9 schools \$10,000 to talk to students on campus; and giving the Police Activities League in
 10 Richmond, California, \$90,000 to provide JUUL’s own vaping education program, “Moving
 11 On,” to teenage students suspended for using cigarettes. Meanwhile, JUUL would collect data
 12 about test scores, surveys, and activity logs about the students.

13 153. Among the more egregious incidents reported by the Subcommittee was a July
 14 24, 2019 presentation in which no parents or teachers were in the room for the presentation, the
 15 message conveyed was that the JUUL product was “totally safe,” and the presenter even
 16 demonstrated to the students how to use a JUUL. The school was presumably paid for this
 17 meeting, which was marketed to the school as an anti-smoking initiative. A JUUL spokesman
 18 said JUUL is no longer funding such programs.

22 **J. Efforts to Address Youth Vaping in King County and Washington State**

23 154. In King County, as in many other communities in the United States, youth vapor
 24 use has reached “epidemic levels.”²³⁸ This is directly tied to Defendants’ conduct. As the King

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 26 238 Seattle & King County Department of Public Health, *Vapor & E-Cigarette Use in Seattle & King County 1*,
<https://www.kingcounty.gov/depts/health/tobacco/~/media/depts/health/tobacco-vapor/documents/vaping-infographic.ashx> (accessed Oct. 11, 2019).

1 County Public Health department observed in 2018, “[y]outh are using e-cigarettes more than
 2 any other tobacco products, and when they do, they’re probably using JUUL.”²³⁹ In addition,
 3 survey results statewide indicate that certain populations already burdened by health disparities
 4 may be significantly affected by the spread of vaping, with the highest rate of vaping among 8th
 5 graders reported by Hispanic youth and the highest rate among both 10th and 12th graders
 6 reported by Non-Hispanic American Indian/Alaska Native students.²⁴⁰ The vaping epidemic in
 7 King County is also especially prevalent in vulnerable populations of youth, including lesbian,
 8 gay, and bisexual youth.²⁴¹

10 155. Many Washington youth do not understand the dangers of vaping. According to a
 11 statewide survey of Washington students, approximately two-thirds of 10th graders did not
 12 believe vaping to be harmful.²⁴²

14 156. The King County Board of Health has found that electronic smoking devices like
 15 JUULs “presents a threat to the public health.”²⁴³ The Board of Health recognized that these
 16 products “have a high appeal to youth due to their high tech design and child-friendly flavors”
 17 and that they “present a substantial risk of nicotine addiction and resultant harm to the public
 18 health and safety.”²⁴⁴ King County regulations prohibit anyone from providing an vaping product

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 22²³⁹ King County Public Health Insider, *supra* note 147.

23²⁴⁰ *Id.*

24²⁴¹ Seattle & King County Department of Public Health, *supra* note 245.

25²⁴² Amy Blondin & Kristen Maki, *Alcohol use remains at an all time low while vaping use increases among*
 Washington youth, Wash. State Health Youth Survey (Mar. 18, 2019), <http://www.askhys.net/Docs/Healthy%20Youth%20Survey%20Substance%20Use%20Press%20Release%20Final.pdf>.

26²⁴³ *Tobacco Products, Electronic Smoking Devices and Unapproved Nicotine Delivery Products* at 19.12.030, King
 County Board of Health Reg. (Feb. 15, 2019), <https://www.kingcounty.gov/depts/health/tobacco/~media/depts/health/board-of-health/documents/code/BOH-Code-Title-19.ashx>.

²⁴⁴ *Id.*

1 to a minor and prohibit certain practices that are likely to allow minors to get access to these
 2 products, such as giving away free samples or selling vaping products from vending machines.²⁴⁵

3 157. Washington State has also recognized the urgency of the youth vaping problem
 4 and taken measures to combat it. On September 27, 2019, Governor Jay Inslee ordered the
 5 Washington State Department of Health to ban all flavored vaping products.²⁴⁶ Governor Inslee
 6 agreed with the FDA: “e-cigarette use among youth has reached epidemic proportions and this
 7 epidemic presents a clear and present danger.”²⁴⁷ He explained that “vapor products containing
 8 nicotine are the most commonly used nicotine products in Washington among youth,” that
 9 “vapor product use increased dramatically among 8th, 10th, and 12th graders between 2016 and
 10 2018” and that “an overwhelming majority” of youth who use vape using flavored products.²⁴⁸
 11 Inslee found that “the appeal of flavored nicotine products, as well as advertising and promotion
 12 activities targeted at youth, are contributing to the dramatic increase in youth vaping.”²⁴⁹

13 158. Washington State Senator Patty Kuderer, who spoke at the press conference
 14 announcing Inslee’s Executive Order explained why this step was important:

15 The rise of vaping has threatened hard earned progress to reduce nicotine addiction
 16 with the same tactics that were tried and true for Marlboro and Kool, utilizing
 17 gimmicks to attract young people. Gummy bear and blue raspberry flavoring aren’t
 18 designed to help adults kick their addiction to tobacco, they are designed to entice
 19 children to their product.²⁵⁰

20 Defendant Eonsmoke sells both gummy bear and blue raspberry flavored vaping pods or juice.

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 23 245 *Id.* at 19.12.050-19.12.090.

24 246 Inslee, *supra* note 99.

25 247 *Id.*

26 248 *Id.*

27 249 *Id.*

28 250 Wash. Governor’s Office, *Inslee issues executive order to change how state will regulate vaping industry in light*
 29 *of recent health crisis*, Medium (Sept. 27, 2019), <https://medium.com/wagovernor/inslee-issues-executive-order-to-change-how-state-will-regulate-vaping-industry-in-light-of-recent-87c296c4f698>.

1 159. On October 9, 2019, the Washington State Board of Health approved an
 2 emergency ban on the sale of flavored vaping products.²⁵¹ Inslee welcomed the decision, saying
 3 that it was necessary to “act on this very important public health issue” to “protect the health of
 4 Washingtonians, especially young people. These emergency rules will help protect public health
 5 and save lives.”
 6

7 160. While these measures are important, they cannot fully address the existing
 8 widespread use of vapor products and resulting nicotine addiction among youth. Because of the
 9 potency of JUUL’s nicotine salts and the ease of delivery—allowing kids to take a puff as often
 10 as every few minutes—widespread “juuling” has created a problem of addiction much greater
 11 than that caused by youth cigarette smoking. As the researchers conducting the national
 12 Monitoring the Future survey wrote in a letter to the New England Journal of Medicine last
 13 month,
 14

15 Current efforts by the vaping industry, government agencies, and schools have
 16 thus far proved insufficient to stop the rapid spread of nicotine vaping among
 17 adolescents. Of particular concern are the accompanying increases in the
 18 proportions of youth who are physically addicted to nicotine, an addiction that is
 19 very difficult to overcome once established. The substantial levels of daily vaping
 suggest the development of nicotine addiction. New efforts are needed to protect
 youth from using nicotine during adolescence, when the developing brain is
 particularly susceptible to permanent changes from nicotine use and when almost
 all nicotine addiction is established.²⁵²
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25 251 King 5 Staff, *Washington Board of Health bans flavored vaping products*, King 5 News, (Oct. 9, 2019)
 26 <https://www.king5.com/article/news/local/washington-board-of-health-bans-flavored-vaping-products/281-ddad5104-7d18-4f96-a2c5-6ff1ed162428>.

252 *Trends in Adolescent Vaping*, *supra* note 4.

1 **K. Impact on Seattle Public Schools**

2 161. Plaintiff Seattle Public Schools is the largest school district in Washington
 3 State²⁵³ and is located in King County, Washington, one of the largest counties in the country.²⁵⁴
 4 From 2017 to 2018, Seattle was the second-fastest growing city in the United States.²⁵⁵ Seattle
 5 Public Schools operates 102 schools, serving approximately 53,000 students.²⁵⁶

6 162. As the largest school district in the county, Seattle Public Schools is at the
 7 forefront of the youth vaping crisis locally. Based on 2018 survey data, 15% of SPS 8th graders,
 8 34.8% of 10th graders, and 43.3% of 12th graders have tried vapor products.²⁵⁷ The percentage
 9 of SPS students considered current users (i.e., who reported vaping at least once in the past 30
 10 days) in 2018 were 8.1% of 8th graders, 20.7% of 10th graders and 25.7% of 12th graders²⁵⁸—a
 11 significant increase over the 2016 current-use rates, which were 3.0% of 8th graders, 6.3% of
 12 10th graders, and 15.6% of 12th graders.²⁵⁹

13 163. Seattle Public Schools has been specially affected by the youth vaping epidemic.
 14 In an interview from 2018, Lisa Davidson, SPS's Prevention and Intervention Manager,
 15 described the impact of vaping on Seattle Public Schools:

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 20 ²⁵³ *About Seattle Public Schools*, Seattle Pub. Schs., https://www.seattleschools.org/district/district_quick_facts (last visited Nov. 4, 2019).

21 ²⁵⁴ Quick Facts: King County, Washington, U.S. Census Bureau,
<https://www.census.gov/quickfacts/fact/map/kingcountywashington/PST045216> (last visited Nov. 4, 2019).

22 ²⁵⁵ Gene Balk, *Big-city growth slows across U.S. – but Seattle still ranks No. 2 in 2018*, Seattle Times (May 23, 2018), <https://www.seattletimes.com/seattle-news/data/big-city-growth-slows-across-u-s-but-seattle-still-ranks-no-2-in-2018/>.

23 ²⁵⁶ About Seattle Public Schools, *supra* at note 260.

24 ²⁵⁷ Healthy Youth Survey 2018 at 10, *supra* note 8.

25 ²⁵⁸ Healthy Youth Survey 2018 at 11, *supra* note 8.

26 ²⁵⁹ Healthy Youth Survey 2016 Report of Participating Schools: Seattle Public Schools Grades 6, 8, 10, and 12 at 10, Healthy Youth Survey (Mar. 1, 2017),
https://www.seattleschools.org/UserFiles/Servers/Server_543/File/District/Departments/CoordSchoolHealth/HealthyYouthSurvey/Dist17001MultiGr.pdf.

1 We even had a few instances of students as young as 5th grade vaping at school
 2 this year. Students have been found vaping on campus, in bathrooms and
 3 hallways, and in parking lots. Students report not knowing that vaping is illegal
 4 on campus or for people under age 18. Students also report not knowing the
 5 potential negative effects vaping may have on their health.²⁶⁰

6 The disruptive effects of vaping on day-to-day operations for Seattle Public Schools have
 7 multiplied rapidly in a short time. In fact, in 2016, vaping rates among SPS students appeared to
 8 be declining compared to 2014 rates. But with the rising popularity of JUUL, any decline
 9 disappeared. Instead, following “the invention of new, cooler, sleeker products,” as Davidson
 10 explained, SPS staff and students saw a rise in vaping, as well as a rise in disciplinary actions.²⁶¹
 11 According to Davidson, in the 2017-2018 school year, 90 percent of SPS’s tobacco and nicotine
 12 violations were for vaping—and over 60 percent of those were for JUULs specifically.²⁶² This
 13 trend has continued: in the 2018-2019 school year, 94% of the nicotine and tobacco violations
 14 were for vapor products, and so far in the 2019-2020 school year, 100% of the violations have
 15 been for vapor products.

16 164. Seattle Public Schools has been directly affected by this surge in youth vaping
 17 caused by Defendants’ misconduct and has had to spend substantial time and resources
 18 combating vaping in schools, training teachers and parents, and disseminating information about
 19 the dangers of youth vaping.

20 165. One of the challenges of this crisis is that misinformation about vaping is
 21 widespread, and traditional anti-smoking messaging is ineffective against vapor products. For
 22 example, as SPS Prevention and Intervention Manager Davidson has explained,
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24 Young people say cigarettes are gross. They know that, right? They know they get
 25 bad breath, and that they smell and all those things. But then when we talk to them

26²⁶⁰ *Id.*

²⁶¹ Radil, *supra* note 10.

²⁶² *Id.*

1 about vaping, they're like, 'but vaping gives me minty breath and it makes me smell
 2 like mangoes!'

3 We have heard mostly from kids that they are excited about it, they think it's a
 4 healthier alternative, it's not harmful, they can stop at any time.²⁶³

5 166. SPS Prevention and Intervention Program staff have worked to counter this
 6 misinformation through the development of curricula, factsheets, posted signage in school
 7 bathrooms and elsewhere on school property, and in-person trainings for parents and community
 8 members. SPS staff updated existing substance use prevention materials to incorporate vapor
 9 products and developed vaping-specific lessons for elementary, middle, and high school
 10 students, including hour-long lesson plans. SPS teachers have then invested time in delivering
 11 these lessons to students—which is time that would have otherwise been devoted to teaching
 12 other lessons.

13 167. In addition to training teachers, SPS Prevention and Intervention Program staff
 14 have also trained administrators, counselors, nurses, and librarians on how to recognize the vape
 15 pods used in JUULs and similar devices as well as the telltale scents of popular vape flavors.
 16 SPS also delivers training to community partners, such as the County Parks and Recreation
 17 department, and, critically, to parents of SPS students. As one SPS parent told a reporter, he
 18 wanted to organize a parent education event at his child's middle school because he doesn't
 19 know the warning signs: "I don't know necessarily what to watch out for."²⁶⁴ But the size of the
 20 district and the urgency of the vaping crisis means that SPS Prevention and Intervention Program
 21 staff cannot keep up with the requests for information. SPS's Davidson delivered information
 22 about vaping at six Parents' Night events in October 2019 alone.
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 26²⁶³ Radil, *supra* note 10.

²⁶⁴ Joel Moreno, *King County teen with vaping illness raises concerns for parents*, Komo News (Sept. 13, 2019), <https://komonews.com/news/local/king-county-teen-with-vaping-illness-raises-concerns-for-parents>.

1 168. The youth vaping epidemic has significantly disrupted SPS's operations.

2 Although Seattle Public Schools has banned e-cigarettes from its premises,²⁶⁵ vaping is still
 3 widespread on SPS secondary school campuses. Some high school students report that their
 4 classmates are vaping in class.²⁶⁶ Vaping is also a significant problem within SPS middle
 5 schools. And on a handful of occasions, elementary school students have been found vaping on
 6 the playground.

8 169. Students who are vaping during the school day are losing valuable learning time
 9 by leaving the classroom to vape. Vaping also has triggered fire alarms in SPS's bathrooms,
 10 forcing the entire building to evacuate. This causes all of the students in the school to miss out of
 11 portions of the lesson for that day, disrupting their education and SPS's educational mission.
 12 Moreover, the nature of JUUL's products and copycat "JUULalikes" means that some SPS
 13 students are experiencing a level of nicotine addiction that is disrupting their ability to
 14 concentrate and to learn. For example, Davidson reported that students are telling her, "I don't
 15 like the way it makes me feel anymore, I think about it too much, I have a hard time being home
 16 in the evening with my family without using it."²⁶⁷

18 170. Currently, seven prevention specialists provide School-Based SBIRT (Screening,
 19 Brief Intervention, and Referral to Treatment) services for the entire district—but funding for
 20 even those seven specialists will end in 18 months. Additional resources are needed to provide
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24 265 *Tobacco-Free Environment*, Seattle Pub. Schs. (Nov. 16, 2016),
 25 https://www.seattleschools.org/UserFiles/Servers/Server_543/File/District/Departments/School%20Board/Policies/Series%204000/4215.pdf (including nicotine and electronic smoking/vapor devices and vapor products in SPS's definition of "tobacco products").

26 266 Moreno, *supra* note 271.

27 267 Radil, *supra* note 10.

1 sustained screening and intervention services across all SPS schools, particularly the secondary
 2 schools.

3 171. In addition, even when students seek treatment themselves, there are limited
 4 options for both the immediate treatment of nicotine addiction for youth and the long-term
 5 behavioral support for recovery from vaping addiction. Staff at SPS's school-based health
 6 centers have fielded questions from students about nicotine replacement products and treated
 7 students experiencing nicotine withdrawal, but there is a need to expand treatment options for
 8 youth specifically.

9 172. The pervasiveness of student vaping requires assistant principals and security staff
 10 to spend increased time patrolling school grounds and necessitates increased resources devoted
 11 to responding to violations. In SPS, nicotine violations, including vaping, are school-based, not
 12 suspendable, offenses; if a student is caught vaping, school staff will confiscate the student's
 13 device, contact the student's parents, provide a tobacco factsheet that includes information about
 14 vaping, and, at the high school level, require the student to complete a 90-minute online
 15 intervention course. The continued availability of this intervention course to students will require
 16 additional funding, as SPS purchased a finite number of enrollments. A second violation of
 17 SPS's anti-smoking policy, which includes vapor products, requires students to write an essay on
 18 the ways that companies target certain groups, such as youth, women, the LGBT community,
 19 African Americans, etc., and how it applies to their own life. School administrators then must
 20 review these essays to ensure compliance with the prompt and anti-plagiarism rules.²⁶⁸ As
 21 mentioned above, 90 percent of tobacco and nicotine violations in Seattle Public Schools for the
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 26²⁶⁸ *Use of Tobacco on School Property*, Seattle Pub. Schs. (July 3, 2012),
https://www.seattleschools.org/UserFiles/Servers/Server_543/File/District/Departments/School%20Board/Procedures/Series%204000/4215SP.pdf.

1 2017-2018 school year were for vaping products and more than 60 percent of those were for
 2 JUUL products specifically.²⁶⁹

3 173. Other examples of the far-reaching impacts of youth vaping on SPS staff include
 4 increased workload for school custodians, who are charged with maintaining the bathrooms
 5 where students congregate to vape and now have to deal with garbage containing nicotine
 6 cartridges and other toxic chemicals products, and increased workload for school bus drivers,
 7 who now have to intervene to stop students from vaping while riding the bus.

8 174. Seattle Public Schools' responses to the rise in youth vaping are limited by
 9 available resources, especially the number of full-time employees. Fully addressing the harms to
 10 Seattle Public Schools caused by Defendants' conduct will require a comprehensive approach,
 11 one that includes, among other things, sustained efforts by specialists who can provide
 12 counseling support to students in the schools, especially middle schools. For Seattle Public
 13 Schools, covering each middle and high school would require 50 additional full-time employees.
 14 Resources are also needed to develop or purchase relevant, evidence-based, and up-to-date
 15 curricula on vaping prevention and to train teachers in it. Additional resources are needed to fund
 16 district-wide screening, intervention, and referral services that include vaping.

17 175. Without the resources to fund additional staff, implement prevention education,
 18 conduct screening and intervention, and other these measures, Seattle Public Schools will
 19 continue to be harmed by the ongoing consequences of Defendants' conduct.

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²⁶⁹ Radil, *supra* note 10.

V. CAUSES OF ACTION

**COUNT ONE — VIOLATIONS OF THE WASHINGTON PUBLIC NUISANCE LAW,
RCW 7.48.010, ET SEQ.**

176. Plaintiff Seattle Public Schools incorporates each preceding paragraph as though set forth fully herein.

177. Plaintiff brings this claim under RCW 7.48.020.

178. Pursuant to RCW 7.48.010, an actionable nuisance is defined as, *inter alia*, “whatever is injurious to health or indecent or offensive to the senses . . .”

179. Specifically, a “[n]uisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others, offends decency . . . or in any way renders other persons insecure in life, or in the use of property.” RCW 7.48.120.

180. Under Washington law, conduct that substantially and/or unreasonably interferes with the Plaintiff's use of its property is a nuisance even if it would otherwise be lawful.

181. Pursuant to RCW 7.48.130, "A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal."

182. Employees and patrons, including students, of Seattle Public Schools have a right to be free from conduct that endangers their health and safety. Yet Defendants have engaged in conduct which endangers or injures the health and safety of the employees and students of Seattle Public Schools by their production, promotion, distribution, and marketing of vapor products for use by minors in Seattle Public Schools and in a manner that substantially interferes with the functions and operations of Seattle Public Schools and impacts the public health, safety, and welfare of the Seattle Public Schools community.

1 183. Each Defendant has created or assisted in the creation of a condition that is
2 injurious to the health and safety of Plaintiff and its students and employees and interferes with
3 the comfortable enjoyment of life and property of the Seattle Public Schools community.
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5 184. Defendants' conduct has directly caused a severe disruption of the public health,
6 order, and safety. Defendants' conduct is ongoing and continues to produce permanent and long-
7 lasting damage.

8 185. This harm to the Plaintiff outweighs any social utility of the Defendants' wrongful
9 conduct because Defendants' conduct violates Washington's public policy against marketing
10 vapor products like JUUL to minors. This policy is expressed through Washington State
11 Governor Jay Inslee's Executive Order 19-03, finding that "it is the policy of the state of
12 Washington to support the health, safety, and well-being of all Washingtonians" and that "e-
13 cigarette use among youth has reached epidemic proportions and that this epidemic presents a
14 clear and present danger." This policy is also expressed through statutes, including but not
15 limiting to

- 17 A. RCW 26.28.080, under which any person who sells, gives, or permits to be
18 sold or given vapor products to a minor is guilty of a gross misdemeanor;
- 19 B. RCW 70.345.140, under which it is illegal for minors to purchase vapor
20 products;
- 21 C. RCW 70.345.090, under which it is illegal for any person to conduct a
22 delivery sale or otherwise ship or transport, or cause to be shipped or
transported, any vapor product ordered or purchased by mail or through the
internet to a minor; and
- 23 D. King County Board of Health Code 19.12.060, under which it is illegal to
24 sell, give, or furnish, or cause or allow to be sold, given or furnished,
electronic smoking devices to a minor.

25 186. Defendants' conduct violated this public policy, including by
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- 1 A. Actively seeking to enter school campuses, targeting children as young as
2 eight through summer camps and school programs, extensively targeting
3 youth through social media campaigns, and recruiting “influencers” to
market to teens;
- 4 B. Engaging in marketing tactics specifically designed to mislead children
5 and youth and to ensnare minors into nicotine addiction, including by
6 explicitly adopting tactics prohibited from Big Tobacco, with the
knowledge that those tactics were likely to ensnare children and youth into
7 nicotine addiction, including using billboards and outdoor advertising,
sponsoring events, giving free samples, and by selling vapor products in
flavors designed to appeal to youth;
- 8 C. Engaging in advertising modeled on cigarette ads and featuring youthful-
9 appearing models and designing advertising in a patently youth-oriented
fashion;
- 10 D. Directing advertising to youth media outlets and media designed to appeal
to children and youth, such as Instagram and other social media channels;
- 11 E. Hosting youth-focused parties across the United States, at which free
samples were dispensed and in which vaping was featured prominently
across social media;
- 12 F. Formulating JUULpods and Eonsmoke products with flavors with the
knowledge that such flavors appealed to youth and with the intent that
youth become addicted or dependent upon vapor products; and
- 13 G. Promoting and assisting the growth of the vapor market and its availability
with knowledge that vapor products were being purchased and used by
large numbers of youth.

187. The health and safety of the students and employees of Seattle Public Schools,
including those who use, have used, or will use vapor products, as well as those affected by
others' use of vapor products, are matters of substantial public interest and of legitimate concern
to Plaintiff.

188. Defendants' conduct has affected and continues to affect a substantial number of
people within Seattle Public Schools and is likely to continue causing significant harm.

1 189. But for Defendants' actions, the use of vapor products by minors would not be as
 2 widespread as it is today, and the vaping public health epidemic that currently exists as a result
 3 of the Defendants' conduct would have been averted.

4 190. Logic, common sense, justice, policy, and precedent indicate Defendants' unfair
 5 and deceptive conduct has caused the damage and harm complained of herein. Defendants knew
 6 or reasonably should have known that their statements regarding the risks and benefits of JUUL
 7 or Eonsmoke were false and misleading, that their marketing methods were designed to appeal to
 8 minors, and that their false and misleading statements, marketing to minors, and active efforts to
 9 increase the accessibility of JUUL products or Eonsmoke products and grow JUUL's market
 10 share, or the market share of Eonsmoke, were causing harm to minors and to schools, including
 11 minors in Seattle Public Schools.

12 191. Thus, the public nuisance caused by Defendants was reasonably foreseeable,
 13 including the financial and economic losses incurred by Seattle Public Schools.

14 192. Alternatively, Defendants' conduct was a substantial factor in bringing about the
 15 public nuisance even if a similar result would have occurred without it. By directly marketing to
 16 youth and continuing marketing practices after it was evident that children were using JUUL
 17 products in large numbers and were specifically using these products in school, JUUL directly
 18 facilitated the spread of the youth vaping epidemic and the public nuisance effecting Seattle
 19 Public Schools. By seeking to capitalize on JUUL's success in addicting minors to nicotine and
 20 by directly marketing to youth and continuing marketing practices after it was evident that
 21 children were using JUUL products and Eonsmoke products in large numbers and were
 22 specifically using these products in school, Eonsmoke directly facilitated the spread of the youth
 23 vaping epidemic and the public nuisance effecting Seattle Public Schools. And, by investing
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1 billions of dollars in JUUL and actively working to promote the sale and spread of JUUL
2 products with knowledge of JUUL's practice of marketing its products to youth and failure to
3 control youth access to its products, Altria directly facilitated the spread of the youth vaping
4 epidemic and the public nuisance effecting Seattle Public Schools.

5 193. In addition, engaging in any business in defiance of a law regulating or
6 prohibiting the same is a nuisance per se under Washington law. Defendants' conduct described
7 herein of deceptively marketing JUUL products or Eonsmoke products to minors violates RCW
8 7.48.010 and therefore constitutes a nuisance per se.

9 194. Defendants' conduct is especially injurious to Seattle Public Schools because, as a
10 direct and proximate cause of Defendants' conduct creating or assisting in the creation of a
11 public nuisance, Plaintiff and its students and employees have sustained and will continue to
12 sustain substantial injuries.

13 195. Plaintiff has had to take steps to mitigate the harm and disruption caused by
14 Defendants' conduct, including the following:

- 15 A. Spending additional time monitoring the school bathrooms to ensure
16 students are not vaping;
- 17 B. Spending more time and resources addressing discipline problems at have
18 arisen as a result of student use of vapor products;
- 19 C. Confiscating vapor products;
- 20 D. Meeting with students and the parents of students caught using vapor
21 products at school;
- 22 E. Developing training for teachers, staff, parents, and members of the
23 community regarding vapor products;
- 24 F. Training teachers, staff, and members of the community to recognize
25 vapor products;

- 1 G. Training teachers, staff, and members of the community on the harms of
2 vaping;
- 3 H. Developing lesson plans to teach students about the dangers of vaping;
- 4 I. Educating students as to the harm of vaping;
- 5 J. Purchasing and providing a nicotine intervention course for students who
6 use vapor products at school;
- 7 K. Meeting with parents, community members, community groups, and
8 government organizations to discuss the youth vaping epidemic;
- 9 L. Installing anti-vaping signs around school campuses;
- 10 M. Creating, printing, and posting anti-vaping signs in school bathrooms;
- 11 N. Providing intervention services and referrals to substance abuse treatment
12 programs;
- 13 O. Updating its student handbook to address vaping, including JUUL use;
14 and
- 15 P. Updating school policies to address vaping, including JUUL use.

196. Fully abating the epidemic of youth vaping resulting from Defendants' conduct
will require much more than these steps.

197. Pursuant to RCW 7.48.020, Seattle Public Schools requests an order providing for
abatement of the public nuisance that Defendants have created or assisted in the creation of, and
enjoining Defendants from future violations of RCW 7.48.010.

198. Pursuant to RCW 7.48.020, Plaintiff also seeks the maximum statutory and civil
penalties permitted by law, including actual and compensatory damages, as a result of the public
nuisance created by Defendants.

199. Pursuant to RCW 4.22.070, Defendants are jointly and severally liable because
they have acted in concert with each other and because Plaintiff is not at fault.

1 **COUNT TWO — VIOLATIONS OF THE RACKETEER INFLUENCED AND**
2 **CORRUPT ORGANIZATIONS ACT (“RICO”), 18 U.S.C. § 1961, ET SEQ.**

3 200. Plaintiff hereby incorporates by reference the allegations contained in the
4 preceding paragraphs of this complaint.

5 201. This claim is brought by Plaintiff against JUUL and the Altria Defendants for
6 actual damages, treble damages, and equitable relief under 18 U.S.C. § 1964 for violations of 18
7 U.S.C. § 1961, *et seq.*

8 202. At all relevant times, each of these Defendants is and has been a “person” within
9 the meaning of 18 U.S.C. § 1961(3), because they are capable of holding, and do hold, “a legal
10 or beneficial interest in property.”

12 203. Plaintiff is a “person,” as that term is defined in 18 U.S.C. § 1961(3), and has
13 standing to sue as it was and is injured in its business and/or property as a result of the
14 Defendants’ wrongful conduct described herein.

15 204. Section 1962(c) makes it “unlawful for any person employed by or associated
16 with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce,
17 to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through
18 a pattern of racketeering activity” 18 U.S.C. § 1962(c).

20 205. Section 1962(d) makes it unlawful for “any person to conspire to violate” Section
21 1962(c), among other provisions. See 18 U.S.C. § 1962(d).

22 206. Each Defendant conducted the affairs of an enterprise through a pattern of
23 racketeering activity, in violation of 18 U.S.C. § 1962(c) and § 1962(d).

1 **A. Description of the Defendants' Enterprises**

2 207. RICO defines an enterprise as “any individual, partnership, corporation,
 3 association, or other legal entity, and any union or group of individuals associated in fact
 4 although not a legal entity.” 18 U.S.C. § 1961(4).

5 208. Under 18 U.S.C. § 1961(4) a RICO “enterprise” may be an association-in-fact
 6 that, although it has no formal legal structure, has (i) a common purpose, (ii) relationships among
 7 those associated with the enterprise, and (iii) longevity sufficient to pursue the enterprise’s
 8 purpose. See *Boyle v. United States*, 556 U.S. 938, 946 (2009).

9
 10 209. Defendant JUUL and the Altria Defendants formed an association-in-fact
 11 enterprise—referred to herein as the JUUL Enterprise. The JUUL Enterprise is an ongoing and
 12 continuing business organization consisting of “persons” within the meaning of 18 U.S.C. §
 13 1961(3) that created and maintained systematic links for a common purpose: to maintain and
 14 expand JUUL’s massive, and ill-gotten, share of the e-cigarette market.

15
 16 210. As set forth above, Big Tobacco has long known the importance of targeting
 17 youth and addicting them to nicotine. This profits-above-public-health mentality applies with
 18 equal to force to e-cigarette market as well as the market for regular cigarettes. What was
 19 different here was that Big Tobacco was out-competed by a start-up, albeit a start-up using some
 20 of Big Tobacco’s tried and true tactics. As set forth in the complaint, JUUL obtained its massive
 21 market share over a short time period by successfully targeting youth and addicting youth to
 22 nicotine.

23
 24 211. JUUL was well aware that its conduct was reprehensible, and that if it became
 25 established and widely known that this was how JUUL obtained its massive market share, there
 26 would likely be severe consequences. For this reason, it went to great lengths to conceal this

1 conduct by vociferously denying that it was marketing and targeting youth. Instead, JUUL
 2 argued that its product was created and designed as a “smoking cessation device”—despite the
 3 fact that the FDA never approved it as such, and that this smoking cessation device was slickly
 4 designed, easily concealable, and had its own “party mode.” These false statements were
 5 designed to protect JUUL’s market share by concealing its misconduct.
 6

7 **B. The Enterprises Sought to Fraudulently Increase Defendants’ Profits and Revenues**

8 212. Not everyone was fooled by JUUL’s deception, particularly JUUL’s competitors
 9 in the e-cigarette market. Altria recognized JUUL’s tactics for what they were, designed to addict
 10 children, and made this clear in a public letter to the FDA on October 25, 2018. Altria even
 11 displayed this letter on its website, disclaiming the very marketing and advertising tactics JUUL
 12 relied on. At this time, Altria had apparently concluded that it could not out-compete JUUL—
 13 that JUUL’s massive market share was too great to overcome. Altria informed the FDA that it
 14 was exiting the market for pod-based e-cigarettes, on the grounds that these products contributed
 15 to the youth vaping epidemic.
 16

17 213. Unfortunately, Altria’s purported concern for the public health was short-lived. A
 18 mere two months after publicly condemning JUUL’s tactics for targeting youth, in December of
 19 2018, Altria once again chose to place profits before the public health by making a \$12.8 billion
 20 equity investment in JUUL, the largest equity investment in US history. Having long followed
 21 JUUL’s market share dominance with envy, Altria decided to go from a competitor to a co-
 22 conspirator. Altria and JUUL thus formed a RICO enterprise—the JUUL Enterprise—with the
 23 goal of preserving, and profiting from, JUUL’s ill-gotten market share.
 24

25 214. The JUUL Enterprise recognized that one of the keys to preserving JUUL’s
 26 market share was to continue to falsely deny that JUUL marketed its tobacco products to youth.

1 Thus, in furtherance of their Enterprise, JUUL and Altria repeatedly made statements denying
 2 that one of JUUL's intended targets for its product was children, that JUUL's product was really
 3 created and designed as a smoking cessation device, and that JUUL's product was all along
 4 intended for "switchers" (existing smokers that were open to vaping). These statements are false,
 5 and constitute mail and wire fraud, predicate acts under RICO.
 6

7 215. Thus, at all relevant times, each Defendant was aware of the conduct of the JUUL
 8 Enterprise, was a knowing and willing participant in that conduct, and reaped profits from that
 9 conduct in the form of sales and distribution of JUUL products.

10 216. The persons engaged in the JUUL Enterprise are systematically linked through
 11 contractual relationships, financial ties, and continuing coordination of activities. The Altria
 12 Defendants have invested \$12.8 billion in JUUL—the largest equity investment in United States
 13 history. This investment gives Altria a 35% stake in JUUL.
 14

15 217. Altria has already publicly acknowledged that under the terms of its financial
 16 relationship with JUUL, Altria will provide its considerable legal, regulatory and lobbying
 17 expertise to help JUUL navigate its relationship with regulators. Presumably this would also
 18 include former Commissioner Gottlieb's agency, the FDA. After receiving Altria's October letter
 19 criticizing JUUL's tactics, and learning of Altria's \$12.8 billion investment, FDA Commissioner
 20 Gottlieb was outraged and demanded a meeting. Commissioner Gottlieb described this meeting
 21 as "difficult" and "did not come away with any evidence that public health concerns drove
 22 Altria's decision to invest in JUUL, and instead sa[id] it looks like a business decision." Roughly
 23 one month later, he abruptly resigned his position.
 24

25 218. There is regular communication between JUUL and the Altria Defendants in
 26 which information regarding Defendants' scheme to protect, maintain and expand JUUL's

1 market share is shared. Typically, this communication occurred, and continues to occur, through
2 the use of the wires and the mail in which Defendants share information regarding the operation
3 of the JUUL Enterprise and its cover-up of JUUL's efforts to target and addict youth.

4 219. The JUUL Enterprise functions as a continuing unit for the purposes of executing
5 accomplishing its objectives, and when issues arise, each member of the Enterprise agrees to take
6 actions to support the Enterprise.

7 220. Each Defendant participated in the operation and management of the JUUL
8 Enterprise by directing its affairs as described herein. Altria's \$12.8 billion investment gives it a
9 35% ownership stake in JUUL, and allows it to appoint a third of its board. In a sign of Altria's
10 management influence and control, last month, JUUL's CEO resigned to be replaced by a career
11 Altria executive, K.C. Crosthwaite. Mr. Crosthwaite had most recently served as the vice
12 president and chief growth officer of Altria Client Services LLC, overseeing the company's
13 work, including digital marketing, packaging design & innovation, product development, and
14 safety, health, and environmental affairs. Crosthwaite is intimately familiar with Big Tobacco's
15 practices, having previously served as the president and CEO of Phillip Morris USA, the vice
16 president and general manager at Marlboro, and the vice president of strategy and business
17 development of at Altria Client Services LLC.

18 221. While Defendants participate in, and are members of, the JUUL Enterprise, they
19 have an existence separate from the Enterprise, including distinct legal statuses, affairs, offices
20 and roles, officers, directors, employees, and individual personhood.

21 222. Without the willing participation of each Defendant, the JUUL Enterprise's
22 common course of conduct would not be successful.

1 **C. Predicate Acts: Mail and Wire Fraud**

2 223. To carry out, or attempt to carry out, the objectives of the JUUL Enterprise, the
3 members of the Enterprise, each of whom is a person associated-in-fact with the Enterprise, did
4 knowingly conduct or participate in, directly or indirectly, the affairs of the Enterprise through a
5 pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5) and
6 1962(c), and employed the use of the mail and wire facilities, in violation of 18 U.S.C. § 1341
7 (mail fraud) and § 1343 (wire fraud).

8 224. Specifically, the members of the JUUL Enterprise have committed, conspired to
9 commit, and/or aided and abetted in the commission of, at least two predicate acts of
10 racketeering activity (i.e., violations of 18 U.S.C. §§ 1341 and 1343), within the past ten years.

11 225. The multiple acts of racketeering activity which the members of the JUUL
12 Enterprise committed, or aided or abetted in the commission of, were related to each other, posed
13 a threat of continued racketeering activity, and therefore constitute a “pattern of racketeering
14 activity.”

15 226. The racketeering activity was made possible by the Enterprise’s regular use of the
16 facilities, services, and employees of the Enterprise.

17 227. The members of the JUUL Enterprise participated in the Enterprise by using mail,
18 telephone, and the internet to transmit mailings and wires in interstate or foreign commerce.

19 228. The members of the JUUL Enterprise used, directed the use of, and/or caused to
20 be used, thousands of interstate mail and wire communications in service of the Enterprise’s
21 objectives through common misrepresentations, concealments, and material omissions.

22 229. In devising and executing the objectives of the JUUL Enterprise, its members
23 devised and knowingly carried out a material scheme and/or artifice to defraud the public by

1 denying that JUUL's products were marketed to youth, and that JUUL was really created and
2 designed as a smoking cessation device.

3 230. For the purpose of furthering its desire to preserve and increase its market share,
4 even at the expense exposing and addicting children to nicotine, the JUUL Enterprise committed
5 these racketeering acts, which number in the thousands, intentionally and knowingly with the
6 specific intent to advance its objectives.

7 231. The JUUL Enterprise's predicate acts of racketeering (18 U.S.C. § 1961(1))
8 include, but are not limited to:

9 A. Mail Fraud: the JUUL Enterprise violated 18 U.S.C. § 1341 by sending or
10 receiving, or by causing to be sent and/or received, fraudulent materials via U.S.
11 mail or commercial interstate carriers for the purpose of deceiving the public
12 regarding its efforts to market to youth and the true purpose and design behind its
13 products.

14 B. Wire Fraud: The JUUL Enterprise violated 18 U.S.C. § 1343 by transmitting
15 and/or receiving, or by causing to be transmitted and/or received, fraudulent
16 materials by wire for the purpose of deceiving the public regarding its efforts to
17 market to youth and the true purpose and design behind its products.

18 232. The JUUL Enterprise falsely and misleadingly used the mails and wires in
19 violation of 18 U.S.C. § 1341 and § 1343. Illustrative and non-exhaustive examples include the
20 following:

21 A. "JUUL Labs was founded by former smokers, James and Adam, with the
22 goal of improving the lives of the world's one billion adult smokers by
23 eliminating cigarettes. We envision a world where fewer adults use
24 cigarettes, and where adults who smoke cigarettes have the tools to reduce
25 or eliminate their consumption entirely, should they so desire." (JUUL
26 Labs Website as of Oct. 7, 2019);

27 B. "JUUL Labs exists to help adult smokers switch from combustible
28 cigarettes." (JUUL Labs Website as of Oct. 7, 2019);

29 C. "JUUL was designed with adult smokers in mind. . . . JUUL provides
30 satisfaction to meet the standards of adult smokers looking to switch from
31 smoking cigarettes." (JUUL Labs Website as of Oct. 7, 2019);

1 D. “Our Intent[:] . . . [W]e believe that vaping can have a positive impact
 2 when used by adult smokers, and can have a negative impact when used
 3 by nonsmokers. Our goal is to maximize the positive and reduce the
 4 negative.” (JUUL Labs Website as of Oct. 7, 2019);
 5
 6 E. “It’s a really, really important issue. We don’t want kids using our
 7 products.”(JUUL Chief Administrative Officer Ashely Gould, CNBC
 8 Interview, Dec. 14, 2017);
 9
 10 F. “We market our products responsibly, following strict guidelines to have
 11 material directly exclusively toward adult smokers and never to youth
 12 audiences.” (JUUL Social Media Post, Mar. 14, 2018);
 13
 14 G. “We don’t want anyone who doesn’t smoke, or already use nicotine, to use
 15 JUUL products. We certainly don’t want youth using the product. It is bad
 16 for public health, and it is bad for our mission. JUUL Labs and FDA share
 17 a common goal – preventing youth from initiating on nicotine. To
 18 paraphrase Commissioner Gottlieb, we want to be the off-ramp for adult
 19 smokers to switch from cigarettes, not an on-ramp for America’s youth to
 20 initiate on nicotine. We won’t be successful in our mission to serve adult
 21 smokers if we don’t narrow the on-ramp. . . . Our intent was never to have
 22 youth use JUUL products. But intent is not enough, the numbers are what
 23 matter, and the numbers tell us underage use of e-cigarette products is a
 24 problem. We must solve it.” (Statement of Former CEO of JUUL, Ken
 25 Burns posted on the JUUL website Nov. 13, 2018);
 26
 16 H. “We are taking significant action to prepare for a future where adult
 17 smokers overwhelmingly choose non-combustible products over cigarettes
 18 by investing \$12.8 billion in JUUL, a world leader in switching adult
 19 smokers. We have long said that providing adult smokers with superior,
 20 satisfying products with the potential to reduce harm is the best way to
 21 achieve tobacco harm reduction.” (Statement of Howard Willard, Altria
 22 Chairman and Chief Executive Officer in a Altria Press Release, Dec. 20,
 23 2018);
 24
 21 I. “First of all, I’d tell them that I’m sorry that their child’s using the
 22 product. It’s not intended for them. I hope there was nothing that we did
 23 that made it appealing to them. As a parent of a 16-year-old, I’m sorry for
 24 them, and I have empathy for them, in terms of what the challenges
 25 they’re going through.” (JUUL CEO Ken Burns, CNBC Interview, July
 26 13, 2019);
 21
 25 J. “We never wanted any non-nicotine user, and certainly nobody under the
 26 legal age of purchase, to ever use Juul products. . . .That is a serious
 21 problem. Our company has no higher priority than combatting underage
 22 use.” (Testimony of JUUL Founder James Monsees Before the House

Committee on Oversight and Reform Subcommittee on Economic and Consumer Policy, July 25, 2019);

- K. “We have no higher priority than to prevent youth usage of our products which is why we have taken aggressive, industry leading actions to combat youth usage.” (JUUL statement in response to lawsuits, Aug. 13, 2019);
- L. James Monsees, one of the company’s co-founders, said selling JUUL products to youth was “antithetical to the company’s mission.” (Quoted in New York Times article, Did JUUL Lure Teenagers and Get ‘Customers for Life’?, Aug. 27, 2018);
- M. “Our focus is and will remain entirely on helping adult smokers switch away from combustible cigarettes, the leading cause of preventable death in the world.” (Joshual Raffel, Juul spokesperson, quoted in New York Times article, Philip Morris and Altria Are in Talks to Merge,August 27, 2019);
- N. “We have never marketed to youth and we never will.” (JUUL statement quoted in Los Angeles Times article, Studies show how Juul exploited social media to get teens to start vaping, Sep. 24, 2019)

233. The mail and wire transmissions described herein were made in furtherance of Defendants' scheme and common course of conduct designed to cover-up JUUL's marketing to youth, thereby increasing or maintaining JUUL's market share, resulting in corresponding high profits for all Defendants.

234. Many of the precise dates of the fraudulent uses of the U.S. mail and interstate wire facilities have been deliberately hidden and cannot be alleged without access to Defendants' books and records. However, Plaintiff has described the types of predicate acts of mail and/or wire fraud, including the specific types of fraudulent statements upon which, through the mail and wires, the JUUL Enterprise engaged in fraudulent activity in furtherance of its scheme.

235. The members of the Enterprise have not undertaken the practices described herein
in isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C. §
1962(d), the members of the JUUL Enterprise conspired to violate 18 U.S.C. § 1962(c), as

1 described herein. Various other persons, firms, and corporations, including third-party entities
 2 and individuals not named as defendants in this Complaint, have participated as co-conspirators
 3 with Defendants and the members of the JUUL Enterprise in these offenses and have performed
 4 acts in furtherance of the conspiracy to increase or maintain revenue, maintain or increase market
 5 share, and/or minimize losses for the Defendants and their named and unnamed co-conspirators
 6 throughout the illegal scheme and common course of conduct.

8 236. The members of the JUUL Enterprise aided and abetted others in the violations of
 9 the above laws.

10 237. To achieve their common goals, the members of the Enterprise hid from Plaintiff
 11 and the public: (1) the fraudulent nature of the JUUL Enterprise scheme; (2) the fraudulent
 12 nature of statements made by the JUUL Defendant regarding its efforts to target youth and the
 13 nature of its product; and (3) the true nature and objective of the relationship between the
 14 members of the Enterprise.

16 238. Each member of the JUUL Enterprise, with knowledge and intent, agreed to the
 17 overall objectives of the schemes and participated in the common course of conduct. Indeed, for
 18 the conspiracy to succeed, each of the member of the JUUL Enterprise had to agree to conceal
 19 their fraudulent scheme.

20 239. The members of the JUUL Enterprise knew, and intended that, the public would
 21 rely on the material misrepresentations and omissions made by them.

23 240. As described herein, the members of the JUUL Enterprise engaged in a pattern of
 24 related and continuous predicate acts for years. The predicate acts constituted a variety of
 25 unlawful activities, each conducted with the common purpose of maintaining JUUL's ill-gotten
 26

market share and thereby continuing to receive significant monies and revenues from the public, including youth, based on their misconduct.

241. The predicate acts also had the same or similar results, participants, victims, and methods of commission.

242. The predicate acts were related and not isolated events.

243. Defendants' fraudulent concealment was material to Plaintiff and the public. The pattern of racketeering activity described above is currently ongoing and open-ended, and threatens to continue indefinitely unless this Court enjoins the racketeering activity.

D. Plaintiff Has Been Damaged by Defendants' RICO Violations

244. Plaintiff has been injured by Defendants' predicate acts. The repeated misstatements by the Defendants denying that JUUL marketed to youth and addicted children to nicotine serve to preserve JUUL's market share—a market share that is based upon children purchasing JUUL's tobacco products. The creation and maintenance of this youth e-cigarette market directly harms Plaintiff by imposing costs on its business and property.

245. Defendants' violations of 18 U.S.C. § 1962(c) and (d) have directly and proximately caused injuries and damages to Seattle Public Schools and its community, and Seattle Public Schools is entitled to bring this action for three times its actual damages, as well as injunctive/equitable relief, costs, and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

246. Entering an Order that the conduct alleged herein constitutes a public nuisance under Washington law, including RCW 7.48 *et seq.*:

247. Entering an Order that the Defendants are jointly and severally liable:

248. Entering an Order requiring the Defendants to abate the public nuisance described herein and to deter and/or prevent the resumption of such nuisance;

249. Enjoining Defendants from engaging in further actions causing or contributing to the public nuisance as described herein;

250. Awarding equitable relief to fund prevention education and addiction treatment;

251. Awarding actual and compensatory damages;

252. Awarding statutory damages in the maximum amount permitted by law;

253. Awarding reasonable attorneys' fees and costs of suit;

254. Awarding pre-judgment and post-judgment interest; and

255. Such other and further relief as the Court deems just and proper under the

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

**COMPLAINT
JURY TRIAL DEMANDED
0 - 101**

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1 RESPECTFULLY SUBMITTED this 7th day of November, 2019.

2 SEATTLE PUBLIC SCHOOLS

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